



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

AMENDMENT

STATE AGENCY: Victim Compensation and Government Claims Board

MULTI-COUNTY: Turlock Unified School District
East Bay Regional Park District

A written comment period has been established commencing on **October 3, 2008**, and closing on **November 17, 2008**. Written comments should be directed to the Fair Political Practices Commission, Attention Sarah Olson, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested per-

son, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **November 17, 2008**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Sarah Olson, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Sarah Olson, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3591.6, subsection (a), of the regulations in Title 3 of the California Code of Regulations pertaining to Gypsy Moth Eradication Area as an emergency action that was effective on September 2, 2008. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than February 10, 2009.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before November 17, 2008.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread, and the feasibility of its control or eradication (Food and Agricultural Code Section 5321).

Existing law also provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any

portion of the State as an eradication area and set forth the boundaries, the pest, its hosts, and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

Section 3591.6, subsection (a), was amended and established Alameda County as an eradication area for gypsy moth, *Lymantria dispar*. The effect of this action was to establish authority for the State to conduct eradication activities in Alameda County against this pest. There is no existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3591.6 does not impose a mandate on local agencies or school districts and no reimbursement is required for Section 3591.6 under Section 17561 of the Government Code. The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed actions will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed actions will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed adoption and amendment to the regulations

would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

AUTHORITY

The Department proposes to amend Section 3591.6, subsection (a), pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes to amend Section 3591.6, subsection (a), to implement, interpret and make specific Sections 407, 5322, 5761, 5762 and 5763 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The proposed amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet web-site (www.cdfa.ca.gov/phpps/Regulations.html).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 4. CALIFORNIA HORSE RACING BOARD

TITLE 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO ADD RULE 2066. APPLICATION FOR LICENSE TO OPERATE A MINISATELLITE WAGERING FACILITY

The California Horse Racing Board (Board) proposes to add the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to add Rule 2066, Application for License to Operate a Minisatellite Wagering Facility, to provide that 90 days in advance of the scheduled start date of operation, an applicant shall submit an Application for License to Operate a Minisatellite Wagering Facility CHRB-88 (New 9/08). The proposed regulation also describes the steps that shall be taken if the application is deficient, and steps to appeal a denial of the application.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Tuesday, November 18, 2008**, or as soon after that as business before the Board will permit, at the **University of California, Davis, I.M. Gary Gourley Laboratory, Davis California**. (The I.M. Gary Gourley Laboratory is listed as the “Vet Med Instructional Surgery Building” on the virtual online campus map. Parking is available in Parking Lot 57.) At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representatives, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on November 17, 2008**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
Fax: (916) 263-6022
E-Mail: haroldc@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: sections 19420, 19440, 19590 and 19605.25, Business and Professions Code.

Reference cited: sections 19410.7, 19460 and 19605.25, Business and Professions Code.

Business and Professions Code sections 19420, 19440, 19590 and 19605.25 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Sections 19410.7, 19460 and 19605.25, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 states jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in

the California Horse Racing Board (Board). Business and Professions Code section 19410.7 defines “minisatellite wagering site” as a location where satellite wagering may be conducted, with the approval of the Board, provided that the wagering occurs in an area that is restricted to those who are 21 years of age or older. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19460 provides that all licenses granted under this chapter are subject to all rules, regulations, and conditions from time to time prescribed by the Board. Business and Professions Code section 19590 provides that the Board shall adopt rules governing permitting and regulating pari-mutuel wagering on horse races under the system known as the pari-mutuel method of wagering. Pari-mutuel wagering shall be conducted only by a person or persons licensed under this chapter to conduct a horse racing meeting or authorized by the Board to conduct advance deposit wagering. Business and Professions Code section 19605.25 states the Board may approve an additional 15 minisatellite wagering sites in each zone, as specified.

The Board proposes to add Rule 2066 to provide for an application process for license to operate a minisatellite wagering facility. Subsection 2066(a) states that an applicant shall complete an Application for License to Operate a Minisatellite Wagering Facility CHRB-88 (New 9/08) (CHRB-88), which is incorporated by reference, and is available at the Board’s headquarters office. The CHRB-88 is necessary because the Board needs to determine who will own and operate the facility, the integrity and character of the applicant, and if the applicant is viable and can operate a successful business. This is necessary as only 15 minisatellite facilities are authorized per racing zone. Under Business and Professions Code section 19605.25(h) if there are more than 15 applications for minisatellite wagering facilities in any zone, the Board shall determine which facilities will generate the largest handle, and give priority to the approval of those facilities. The information gathered by the CHRB-88 will help the Board in making such a determination. The CHRB-88 is incorporated in Rule 2066 because it would be cumbersome, unduly expensive, or otherwise impractical to publish the document in the California Code of Regulations. The document is available at Board headquarters offices. This is consistent with the application for license to conduct a horse racing meeting, application for license to operate a satellite wagering facility and an application to act as an advance deposit wagering provider. Dispensing the

forms from Board headquarters offices provides a good idea of how many applicants there may be, and who is applying. The CHRB-88 must be filed not later than 90 days in advance of the scheduled start date of operation. This is consistent with the Board's requirements for application for license to conduct a horse racing meeting, application for license to operate a satellite wagering facility and an application to act as an advance deposit wagering provider. The 90-day requirement provides Board staff with enough time to determine if the application is complete, to properly vet the applicant, and for the Board to hold a hearing regarding the approval of the application. A \$75 check made payable to the Treasurer of the State of California must accompany the CHRB-88. This minisatellite license fee is intended to help ensure that an application is submitted in good faith. The term of the minisatellite wagering facility license is set at two years from the date of issuance. This is consistent with Business and Professions Code section 19604.25(h), which states the Board shall license a minisatellite wagering facility for two years, then review the operation and size of the handle to determine if it is in the best interests of horse racing to renew the license.

Subsection 2066(b) provides that the Board may conduct investigations, inspections or request additional information from the applicant in determining whether to approve the license. This ensures the Board may conduct a thorough investigation of an applicant, and is consistent with Business and Professions Code section 19440, which states all licenses are subject to all rules, regulations, and conditions from time to time prescribed by the Board. This is consistent with current Board practice with regards to applications for license to conduct a horse racing meeting, and applications for license/approval to conduct advance deposit wagering, which have similar provisions.

Subsection 2066(c) provides that the Board or its designee shall be given access for review and audit of all records, which shall be made available by the applicant. In addition, the Board may require the annual submission of audited financial statements. Under Business and Professions Code section 19604.25(h) the Board must determine if a minisatellite wagering facility is operating in the best interests of horse racing, which can be demonstrated by the financial health of the entity and the handle it produces. The Board also wants to confirm that the minisatellite facility is complying within the law and generally accepted accounting principals. Subsection 2066(c) is consistent with Business and Professions Code section 19433, which states the Board may visit, investigate, and place expert accountants and such other persons as it may deem necessary in the office, track, or other place of business of any licensee for the purpose of satisfying itself that its rules and regulations

are strictly complied with. This is also consistent with current practice as the Board may require annual audited financial statements, or other financial information, from racing associations; simulcast entities; charitable foundations and advance deposit wagering providers. In addition, Business and Professions Code section 19605.25(h) requires the Board to determine if it is in the best interests of horse racing to approve an applicant for renewal of a minisatellite license. The determination is based on the size of the handle and a review of the minisatellite operation, which would include a review of the applicant's records.

Subsection 2066(d) requires minisatellite advertisements to contain a statement that persons under 21 years of age are not allowed access to the minisatellite wagering site. This is consistent with Business and Professions Code section 19604.25(a)(4), which provides that a minisatellite wagering site may accept wagers only in areas that are accessible only to persons at least 21 years of age. Subsection 2066(d) also requires that all minisatellite wagering advertisements contain contact information for a recognized problem-gambling support organization. Problem gambling is an area of concern for the Board. Under Business and Professions Code section 19604(f)(2) monies from advance deposit wagering may be forwarded to an organization for the purposes of augmenting a compulsive gambling prevention program. In addition, Board Rule 2071, License to Conduct Advance Deposit Wagering by a California Applicant, and Rule 2072, Approval to Conduct Advance Deposit Wagering by an out-of-state Applicant, require advance deposit wagering advertisement to contain contact information for a recognized problem-gambling support organization.

Subsection 2066(e) states the Board shall notify the applicant if the application is complete or deficient 30 days from the date the application is received at the Board's headquarters office. This is consistent with the application process for license/approval to conduct advance deposit wagering. Subsection 2066(a) requires that an application for license to operate a mini satellite wagering facility must be submitted 90 days prior to the date of operation. A 30-day review period provides time — before the application is heard by the Board — for initial vetting of the application, and for the applicant to provide any missing information. If the application is deficient, the Board must inform the applicant in writing, and provide instructions on what is required to complete the application, and how to request additional time to satisfy requirements in the notification, if needed. This ensures the applicant understands what is required by the Board to complete the application, and that the requirements are documented.

Subsection 2066(f) states the Board shall deny an application within 90 calendar days from the date it is re-

ceived by the Board, unless the applicant is granted additional time to supply information. The 90-day period is consistent with current Board practice. Applications for license to conduct a horse racing meeting, and applications for license/approval to conduct advance deposit wagering are required to be submitted within 90 days of the start date, so they may be vetted, corrected if needed and then heard by the Board. This process is often completed well before the end of the 90-day period.

Subsection 2066(g) states the appeal process an applicant may use if the application is denied. This informs the applicant of the period of time it has to appeal a decision by the Board, and it provides the timeframe in which the Board must respond. The 30-day periods are consistent with current Board practice regarding other types of applications.

Subsection 2066(h) states that after a minisatellite license has been approved, changes to the application will be permitted by order of the Board or by Board approval of a request submitted in writing by the applicant. On occasion a licensee needs to change information provided in its application for license. Subsection 2066(h) provides a mechanism by which changes to applications may be made and approved by the Board.

The cover page to the form CHRB-88 provides general information regarding the application. Items 1 and 2 of the cover sheet inform the applicant that receipt of a license to operate a minisatellite wagering facility is based on the completeness and veracity of the applicant's answers. Omissions, falsehoods or misleading information may result in suspension or revocation of a license. In addition, answers must be complete and up-to-date. Items 2, 3 and 4 provide instructions on how to fill out the application. The instructions will help to prevent confusing attachments, and repetitive responses. Item 5 of the general information sheet states which party must complete the various parts of the application. Item 6 of general information is a vocabulary that defines terms used on the application.

Part I of the CHRB-88 is to be completed by the applicant for license to operate a minisatellite wagering facility. The name of the applicant and the type of entity must be identified, and the address and other contact information, such as telephone, E-mail address and website are required. This information is requested so the Board will know who the entity/applicant is, and how to contact the facility. In addition, information regarding a contact person is required. This provides the Board with an individual to contact if there are issues with the application, or if there are issues once a license is granted.

The applicant is asked to identify the dates it proposes to operate a minisatellite wagering facility. Business and Professions Code section 19605.25(h) states the term of license shall not exceed two years; however, the

applicant may not wish to begin its operations on the day a license is approved. This item also lets the Board know when the applicant might apply for a renewal of license.

Entities that are/were licensed gaming operations in California, or another state, might apply for license to operate a minisatellite wagering facility. If that is the case, the applicant is required to provide information regarding its gaming operation. This will allow the Board to look at the gaming operation run by the applicant, and to become aware of any problems that might be related to that operation.

The CHRB-88 requires the applicant to identify its business structure, and to identify all officers, directors, managers and if it is a Limited Liability Company, provide member or partner information. In addition, if a parent company, paired corporation, or entity is involved, it must be listed. Entities that own 5 percent or more must provide full disclosure. Knowledge of the business structure and persons or entities involved with the applicant allows the Board to conduct a thorough investigation of the applicant. Such knowledge also helps determine the direction of its investigation.

The applicant is asked to attach its most recent annual financial statement, as well as other financial documents. The Board wishes to review such documents to determine the financial ability of the applicant to support a gaming activity.

The applicant must list its minisatellite wagering facility management and staff. This will provide the Board with the ability to look at who actually manages the minisatellite wagering facility, and to determine who needs to be licensed. Not all management staff will need to be licensed, as they would not have oversight.

The applicant must name the racing associations with which it intends to have a contract or an agreement. This informs the Board which racing association the applicant intends to work with, and it indicates how many Part H forms must be submitted with the application.

All entities or individuals that own 5 percent or more of the minisatellite wagering facility must provide a full disclosure statement. A full disclosure statement is also required with the Application for License to Conduct a Horse Racing Meeting CHRB-17 (Rev. 12-06) (CHRB-17), which is incorporated by reference in Rule 1433, Application for License to Conduct a Horse Racing Meeting. The threshold of 5 percent is used to require full disclosure with other types of application for license. The full disclosure instructions, which are also used with the CHRB-17, are provided at the end of Part 1 of the application. Full disclosure requests background information to assist the Board in evaluating the competence, integrity and character of potential licensees. The same information is asked of applicants for license to conduct race meetings, simulcast operators and

applicants for license as contractors, subcontractors and concessionaires.

Under section I. (A) of the full disclosure statement the applicant must provide personal information, including a physical description, which will help in identifying the applicant and/or other individuals involved with the entity operating the minisatellite wagering facility. This will allow Board investigators to describe a person if they are out in the field, and it will help Board investigators contact the person in question.

Section 1. (A1) of the full disclosure statement requires the completion of the Personal History Record Form CHRB 25A (Rev. 09/08) (CHRB 25A), which is incorporated by reference in the CHRB-88. The CHRB 25A is meant to capture the personal history required of an applicant. The form is used for applicants for license to conduct a horse racing meeting, application for license to conduct a simulcast wagering facility, and for sub-contractors, contractors and concessionaires. The Board requires this form as it provides a more in-depth look at the individual involved with the minisatellite wagering facility than the full disclosure statement, which is oriented towards the entity.

Section 1. (B) of the full disclosure statement asks about the relationship of the applicant(s) with members of the Board and its employees. This is important information as Business and Professions Code section 19423 states a person is disqualified from membership on the Board if the person, the person's spouse or any dependent child thereof holds a financial interest or position of management with any business entity which conducts pari-mutuel horse racing, or holds a financial interest in a management or concession contract with any business entity which conducts pari-mutuel horse racing. In addition, Business and Professions Code section 19429 provides that a person is disqualified from employment by the board if the person, the person's spouse, or any dependent child thereof holds a financial interest or position of management with any business entity which conducts pari-mutuel horse racing, or holds a financial interest in a management or concession contract with any business entity which conducts pari-mutuel horse racing.

If the applicant is a corporation, sections 1. (C) and 1. (D) of the full disclosure statement ask about the state in which the corporation is incorporated, and if the corporation is currently under indictment or convicted of a criminal offense. The Board is charged with maintaining the integrity of horse racing, and in exercising this charge, is interested in any substantial legal proceedings, pending or otherwise, that a potential licensee may be a part of.

Section II. (A) asks for all names used by the applicant and information that would assist in the service of process in California, if needed. Business and Profes-

sions Code section 19435 states the Board, its executive director, or the stewards, may issue subpoenas for the attendance of witnesses or the production of any records, books, memoranda, documents, or other papers or things, as is necessary to enable any of them to effectually discharge their duties.

Sections II (B), (C) and (D) require disclosure regarding the business structure of the applicant; information about organizers if a business has been in existence less than five years; and organizational documents. This provides the Board with information regarding the applicant's business model and persons who may be involved in the business, or in organizing the business.

Sections II (E), (F), (G) and (H) also require disclosure regarding directors, officers and partners, any entities that might be in a position to exercise control in the management or financial affairs of the applicant, and outside racing interests of those involved in the entity. This will give the Board an overview of the persons who are involved with the applicant entity and if such persons were or are involved in horse racing in California or another state.

The Personal History Record Form CHRB 25A (Rev. 09/08) is incorporated by reference in the form CHRB-88. The CHRB 25-A is meant to capture the personal history required of an applicant. The form is used for applicants for license to conduct a horse racing meeting, application for license to conduct a simulcast wagering facility, and for sub-contractors, contractors and concessionaires. The Board requires this form as it provides a more in-depth look at the individual involved with the minisatellite wagering facility than the full disclosure statement, which is oriented towards the entity.

The General Instructions for the CHRB-25A states who must fill out the form, and provides direction regarding how to fill out the form.

Section 1 of the CHRB-25A asks for personal information such as name, date of birth, and business address. The applicant is informed that the information may be disclosed pursuant to the Public Records Act. Section 1 does not ask for the home address of the applicant, as the Board does not release home addresses of applicants in accordance with the California Public Records Act. Section 1.A. asks for citizenship information, and Section 2 asks for marital information. The Board wishes to know the marital status of an applicant to ensure a spouse or domestic partner does not have ties to the Board. Section 3 requires information regarding current and former employment. This will enable the Board to fully investigate the applicant, and points to employment that may have been gaming related. Section 4 of the CHRB-25A asks about convictions or pending criminal charges. The Board is responsible for ensuring the integrity of horse racing and the protection

of the public, so it is interested in the criminal history of any applicant, or of any person who may be involved in an entity applying for a license. (See sections 19401 and 19440, Business and Professions Code.) In this regard the Board is also interested in any privileged or professional license an applicant may have held in another state. The applicant's conduct while holding such a license may be an indicator of future conduct. To determine the applicant's past license history, and any history of involvement in the gaming industry, including that of the applicant's spouse or relatives, the applicant must complete sections 5.A. through 5.F.

An applicant's financial involvement with the entity proposing to operate a minisatellite wagering facility is important in determining relationships. In addition, the applicant's personal financial history is an indicator of character, and an ability to engage in and support the business for which the application is submitted. This information is captured on section 6.A. through 6.F.

Section 7 of the CHRB-25A captures confidential applicant information. This includes the residential address of the applicant and spouse/domestic partner, and the social security number and driver's license number of the applicant and spouse/domestic partner. This information is necessary, as it enables the Board's investigative staff to conduct a more thorough background check of the applicant. The information captured on section 7 of the CHRB-25A is confidential in accordance with the California Public Records Act.

The 'Affidavit of Applicant' is the section of the CHRB-25A where the applicant certifies under penalty of perjury that the statements made on the CHRB-25A are true and correct. The applicant also acknowledges that he or she voluntarily submitted the application under oath with full knowledge that certifications that are materially false are a felony under California Business and Profession Code section 19439.

The final page of the CHRB-25A is an 'Applicant's Request to Release Information.' This release is necessary as it allows the Board's investigators access to documents related to the vetting of the applicant. Unless signed in the presence of a CHRB representative, a Notary Public must certify the release.

Part II of the CHRB-88 is to be filled out by the horse racing association that will contract with the applicant entity. This informs the Board that the applicant has an agreement, as required by Business and Professions Code section 19605.25(a)(2). However, it is not a statement that the Board has approved the agreement. The Board needs to know which racing associations will provide its racing program to the minisatellite wagering facility so it may determine if it will approve such agreements, and so it will know the application is complete and is ready to be heard by the Board.

Part III of the CHRB-88 is to be completed by the simulcast organization that has come to an agreement with the racing associations(s) conducting a racing meeting and the applicant for license to operate a minisatellite wagering facility. The agreement must be approved by the Board pursuant to Business and Professions Code sections 19605.25 and 19605.3.

Business and Professions Code section 19605.25(a)(2) provides that the Board may approve a minisatellite wagering facility if an agreement in accordance with subdivision (a) of section 19605.3 has been executed and approved by the Board. The terms and conditions of the agreement shall be subject to the approval of the horsemen's organization. Section I of Part III of the CHRB-88 requires the submission of the agreement between the association, simulcast organization and minisatellite wagering facility. In addition, it also requires the submission of horsemen's written approvals. This ensures such agreements have been made before the application is heard by the Board.

Business and Professions Code section 19605.25(h) states the Board shall make a determination regarding which facility will generate the largest handle if there are more than 15 applicants for each zone. Section I of Part III of the CHRB-88 requires that information regarding hours of operation; times during the year when the facility will not be utilized; which California live race meetings will be offered for wagering purposes; and a list of out-of-state and out of country tracks that will be imported. In addition, the section asks for the number of parimutual terminal machines available. This information will assist the Board in determining which applicant may generate the largest handle if there are more than 15 applicants in a particular zone.

To ensure that a minisatellite wagering facility is adequately staffed, Section I of Part III of the CHRB-88 requires the submission of a staffing plan. The plan must include the number of pari-mutuel clerks. Under Business and Professions Code section 19605.25(5)(b) pari-mutuel clerks must be available to service the self-service machines and to cash wagering vouchers. The Board is interested in a staffing plan to ensure compliance with the statute, and to ensure the site will be adequately staffed in other areas.

Section II of Part III of the CHRB-88 deals with supervision, security and fire prevention. Security is a necessary component of a minisatellite wagering facility, as it will be taking wagers and cashing winning tickets. This section requires a security plan that provides information regarding security personnel and the law enforcement department having jurisdiction over the premises of the facility. The Board requires all facilities under its jurisdiction to provide evidence that they have undergone a regular fire clearance from fire authorities

having jurisdiction. In addition, it requires that such facilities provide evidence of workers' compensation insurance coverage, secured in accordance with Division 4 (commencing with section 3700) of the Labor Code. These are common sense requirements that ensure the safety of staff and patrons, and that ensure staff has coverage. Section II of Part III of the CHRB-88 requires that the applicant attach a fire clearance and a certificate of insurance for workers' compensation coverage.

Sections III and IV of Part III of the CHRB-88 require the applicant to attach a detailed scale plan of the facility, which identifies how the designated minisatellite wagering area will be restricted to patrons 21 years of age and over. In addition, the applicant must describe the amenities that will be available for patrons, including food, beverages, seating and parking. Business and Professions Code section 19605.25(4) states a minisatellite wagering facility must be in an area that is restricted to those who are 21 year of age or older. The Board wishes to ensure the minisatellite wagering area is clearly restricted to persons who are 21 and over. In addition, it wants to ensure the facility is attractive to patrons, and will provide adequate space and services. These issues are important, as there are a limited number of minisatellite facilities available per zone, and the Board is charged with determining which applicant will produce the greatest handle (Business and Professions Code section 19605.25(h)).

Section V of Part III of the CHRB-88 requires the applicant to describe the equipment to be used at the minisatellite wagering facility. This is in compliance with Business and Professions Code section 19605.25(a)(5), which stated the Board shall approve the equipment used in conducting wagering at the site, communication system, technology, and method used by the site to accept wagers and transmit odds, results and other data related to wagering.

Section VI of Part III of the CHRB-88 asks the applicant to describe advertising and promotional plans. The Board currently monitors advertising and promotional plans of racing associations and racing fairs, as it wishes to encourage such entities to promote horse racing to the maximum extent possible. The Board is also interested in improvements made to benefit racing patrons, as it understands such improvements benefit horse racing in general. The forms CHRB-17, and Application for License to Conduct a Horse Racing Meeting of a California Fair CHRB-18 (Rev. 12/06) (CHRB-18), which are incorporated by reference in Board Rule 1433, Application for License to Conduct a Horse Racing Meeting, ask for information regarding the racing association's promotional plans, as well as any improvements made to the facility to benefit racing patrons. Additionally, the Board wishes to ensure the minisatellite wagering facility complies with Rule 2066, Application for Li-

cense to Operate a Minisatellite Wagering Facility, which requires that any advertising shall contain a statement that persons under 21 are not allowed access to the minisatellite wagering site (See also Business and Professions Code section 19605.25(4)).

Section VII of Part III of the CHRB-88 asks about admission charges and service fees. The Board also requires this information from applicants for license to conduct horse racing meetings (CHRB-17 and CHRB-18). The Board does not dictate the admission price or service fees a racing association or satellite wagering facility may charge patrons, but they are part of the over-all "experience" patrons have at such facilities.

Section VIII of Part III of the CHRB-88 is to be completed only if the application is for renewal of the license. The section asks for an explanation of any changes to the business structure or controlling interests that have taken place since the last application. This information is necessary in determining if additional information is required, and who might need to be licensed. Under Business and Professions Code section 19605.25(h) the Board must determine if it is in the best interests of horse racing to renew a minisatellite license. Understanding any changes to the business structure may help in making such a determination.

The sections marked "Agreements," "Notices to Applicant," and "Declarations" provide information and statements regarding the application, responsibilities of various parties to the application, and approvals and contracts that must be in place for the conduct of the minisatellite wagering facility. These sections inform the applicants of their responsibilities, and they help ensure compliance with the Board's requirements.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.
Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed addition of Rule 2066 will not have a significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would

necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed addition of Rule 2066 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to add Rule 2066 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5 subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed texts of the regulations, the initial statement of reasons, the modified texts of the regulations, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: harolda@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden, Regulation Analyst
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of

the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed texts, the modified texts, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF STATEMENT OF REASONS:

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulations in their current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed texts of the regulations and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and

Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **November 20, 2008**, at 10:00 a.m. in the Second Floor Council Chambers of the Glendale City Hall, 613 E. Broadway, Glendale, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **November 20, 2008**, following the Public Meeting, in the Second Floor Council Chambers of the Glendale City Hall, 613 E. Broadway, Glendale, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **November 20, 2008**, following the Public Hearing, in the Second Floor Council Chambers of the Glendale City Hall, 613 E. Broadway, Glendale, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to,

an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **November 20, 2008**.

1. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 7,
Article 98
Section 4994

Crane Hoisting—Use of Outriggers, Stabilizers, and Other Supports

Descriptions of the proposed changes are as follows:

1. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 7,
Article 98
Section 4994

Crane Hoisting—Use of Outriggers, Stabilizers, and Other Supports

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking was initiated as a result of the Administrative Law Judge's (ALJ's) decision in Occupational Safety and Health Appeals Board Docket Nos. 01-R3D2-3732 through 3734, an appeal by Art's Trench Plate and K-Rail. In that matter, the Division of Occupational Safety and Health (Division) maintained that, while the crane at issue in the appeal was operating with its wheels off the working surface, Section 4994(a) required that the outriggers that supported the crane be fully extended as recommended by the manufacturer. The ALJ, on the other hand, stated that under appropriate circumstances, the requirements of Section 4994(a)

could be satisfied if the outriggers are only partially extended.

The purpose of this rulemaking is to modify the wording of Section 4994(a) so as to remove the ambiguity illustrated by the divergent assertions of the Division and the ALJ and to add to the comprehensiveness of the safety order by including references to stabilizers in addition to outriggers.

Section 4994: Hoisting.

Section 4994 contains a number of provisions intended to promote safety in crane hoisting. Section 4994(a) states in part that “cranes shall not be operated with wheels or tracks off the ground or working surface at any time unless properly bearing on outriggers.” This proposal relieves the ambiguity as to whether the outriggers must be fully extended in order for the crane to be “properly bearing” on them. The proposal, in a new subsection (b)(3), would require that the outriggers be set in accordance with the crane manufacturer’s specifications. If the crane manufacturer is out of business or the manufacturer specifications are not available, a “qualified person” is to determine the extent the outriggers are to be extended. “Qualified person” is defined at California Code of Regulations, Title 8, Section 3207. The provision regarding manufacturers that are out of business is added because even though specifications issued by such manufacturers might still be available, the manufacturers, being out of business, are not able to modify those specifications in accordance with newly-acquired data. These amendments clarify this standard for employers and enhance the safety of employees by assuring the crane does not tip over, which could result in serious injury or fatality.

This proposal would also add new subsections (b)(4) and (b)(5) in order to account for other accepted and widely used mechanisms for enhancing crane stability during hoisting. Subsection (b)(4) specifies the manner in which timbers, cribbing and structural members are to be used. Subsection (b)(5) specifies that when a crane is equipped with stabilizers, the stabilizers are to be used in accordance with provisions of a national consensus standard incorporated by reference. These amendments further enhance employee safety by assuring crane stability to prevent serious injuries.

DOCUMENT INCORPORATED BY REFERENCE

1. American Society of Mechanical Engineers, Articulating Boom Cranes, ASME B30.22–2000, Section 22–3.2, Operating Practices: Subsection 22–3.2.1, Handling the Load: (7) and (8).

Because ASME B30.22–2000 is copyrighted by the American Society of Mechanical Engineers, it is not practical to publish these requirements in Title 8. There-

fore, it is proposed to incorporate the document by reference. Copies of this document are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article

XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/ UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than November 14, 2008. The official record of the rule-making proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on November 20, 2008, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based is open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CURRENT REGULATIONS FOR LARGE SPARK-IGNITION ENGINES WITH AN ENGINE DISPLACEMENT LESS THAN OR EQUAL TO ONE LITER

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted be-

low to consider adoption of amendments to the California regulations for large spark-ignition (LSI) engines with engine displacements less than or equal to one liter (≤ 1.0 L).

DATE: November 20, 2008

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium, Second Floor
1001 "I" Street
Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., November 20, 2008, and may continue at 8:30 a.m., November 21, 2008. This item may not be considered until November 21, 2008. Please consult the agenda for the meeting, which will be available at least 10 days before November 20, 2008, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document and other related material can be made available in Braille, large print, audiocassette or computer disk. For assistance, please contact ARB's Reasonable Accommodations/Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services, or go to <http://www.arb.ca.gov/html/ada/ada.htm>.

If you are a person with limited English and would like to request interpreter services to be available at the Board meeting, please contact ARB's Bilingual Manager at 916-323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to section 2433, chapter 9, article 4.5, title 13, California Code of Regulations (CCR), and proposed amendments to the incorporated "California Exhaust and Evaporative Emission Standards and Test Procedures For New 2010 and Later Off-Road Large Spark-Ignition Engines," as adopted March 2, 2007.

Background: Health and Safety Code sections 43013 and 43018 direct ARB to achieve the maximum feasible and cost-effective emission reductions from all mobile source categories, including LSI engines,

through the setting of emission standards and other requirements.

In 1998, the Board adopted regulations for LSI engines and equipment, including provisions for exhaust emission standards and test procedures, labeling requirements, warranty, in-use compliance testing, and production line testing. New LSI engines above 19 kilowatts (kW) which power off-road equipment must be certified under the CCR, title 13, chapter 9, sections 2430 through 2439, which incorporates two sets of emission standards based on engine displacement.

For the larger displacement engines, those greater than one liter in size (> 1.0 L), the emission control requirement began with the 2001 model year (MY). This engine size category is almost exclusively made up of automotive-derived engines which are readily adapted to use existing automotive controls. The smaller displacement engines, LSI engines ≤ 1.0 L, are typically used in such applications as portable generators (about 40%), large turf care equipment (about 30%), and industrial equipment (about 30%). At the time of the initial rulemaking for these engines in 1998, industry argued that the engines were more similar to a different category of off-road engines known as "small off-road engines" than to the LSI engines > 1.0 L and therefore it would be more appropriate that they be required to meet the small off-road engine emission standards. The Board agreed and approved emission standards equivalent to those for the small off-road engines. Later, in 2003, the Board approved more stringent emission standards for the small off-road engines, but no consideration was given at the time to align the LSI and small off-road engine emission standards. Thus, the LSI engines ≤ 1.0 L remained subject to the less stringent emission standards adopted in 1998.

In May of 2006, the Board approved a 0.8 g/kW-hr of HC+NO_x emission standard for the LSI engines > 1.0 L category. LSI engines ≤ 1.0 L were not affected by this emission standard change and, again, remained subject to the emission standards adopted in 1998.

Description of the Proposed Regulatory Action:

Staff proposes a new set of exhaust emission standards for new LSI engines ≤ 1.0 L. These emission standards are both technologically feasible and cost-effective. The proposed exhaust emissions standards are presented in the table below, as are the existing emission standards for comparative purposes.

Proposed Emission Standards for LSI Engines ≤ 1.0 L

Model Year	Engine Displacement	Durability Period	HC+NO _x (g/kW-hr)	CO (g/kW-hr)
2002–2010 (current requirement)	≤ 1.0 L	1,000 hours or 2 years	12.0	549
2011 and subsequent	≤ 825 cc	1,000 hours or 2 years	8.0	549
2011–2014	> 825 cc – ≤ 1.0 L	1,000 hours or 2 years	6.5	375
2015 and subsequent	> 825 cc – ≤ 1.0 L	1,000 hours or 2 years	0.8	20.6

Staff also proposes that LSI engines ≤ 1.0 L meet the same evaporative emission requirements applicable to small off-road engine equipment starting in 2011. Currently, evaporative emissions from this equipment are uncontrolled.

Additionally, staff proposes that LSI engines used in vehicles which are substantially similar to off-highway recreational vehicles would be required to meet the proposed LSI engine emission standards but would demonstrate compliance using the off-highway recreational vehicle test procedures. Specifically, LSI engines used in vehicles that meet the “Off-Road Sport Vehicle,” or “Off-Road Utility Vehicle” definitions (except for payload capacity) in CCR, title 13, section 2411, would be subject to the proposed LSI engines ≤ 1.0 L emission standards beginning in 2011.

A more detailed description of staff’s proposal is included in the Staff Report: Initial Statement of Reasons for Rulemaking to Consider Amendments to the Current Regulations for Large Spark-Ignition Engines with an Engine Displacement Less Than or Equal to One Liter.

COMPARABLE FEDERAL REGULATIONS

LSI engines are regulated federally under title 40, CFR, part 1048, which is generally harmonized with the California emission standards until 2010, when more stringent California standards go into effect for LSI engines > 1.0 L.

The U.S. EPA program requires manufacturers of LSI engines ≤ 1.0 L to certify their engines under the nonroad spark-ignition regulation, which is the federal equivalent of ARB’s small off-road engine regulation, with a 30 kW cap. U.S. EPA’s Phase 3 standards are less stringent than the proposal’s exhaust emissions standards and evaporative emission standards.

The proposed regulations are expected to reduce emissions from ozone precursors in a cost-effective manner, beyond what would be accomplished by the existing federal regulations. Thus, the cost of the sepa-

rate California program is justified by the benefit to human health, public welfare, and the environment. In addition, Health and Safety Code sections 43013 and 43018 authorize the differences from the federal program.

BENEFITS OF THE PROPOSAL

The intent of the proposed regulations is to reduce emissions from LSI engines ≤ 1.0 L and equipment utilizing technologies that are technologically feasible and cost-effective. By 2020, the proposal would reduce approximately 4.5 tons per day of reactive organic gases plus oxides of nitrogen (ROG+NO_x) at an estimated cost, which varies by equipment type, of approximately \$0.01 to \$7.16 per pound of ROG+NO_x emissions reduced.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: “Staff Report: Initial Statement of Reasons for Rulemaking, Public Hearing to Consider Amendments to the Current Regulations for Large Spark-Ignition Engines with an Engine Displacement Less Than or Equal to One Liter.”

Copies of the ISOR and the full text of the proposed regulatory language, in underline and ~~strikeout~~ format to allow for comparison with the existing regulations, may be accessed on the ARB’s web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322–2990 at least 45 days prior to the scheduled hearing on November 20, 2008.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested

from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Scott Rowland, at (626) 575-6676 or srowland@arb.ca.gov, or Mr. Hung-Li Chang, at (626) 575-6683 or hchang@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries, concerning the proposed administrative action, may be directed are Ms. Lori Andreoni, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533.

The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/2008/lsi2008/lsi2008.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to state or local agencies. The ARB may incur additional implementation or enforcement costs at some future time.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB is not aware of any cost impacts that a representative person would necessarily incur in his or her private capacity in reasonable compliance with the proposed action. Manufacturers of LSI typically pass some of the cost of compliance on to their customers. Accordingly, ARB anticipates that affected businesses would similarly pass on some of the costs incurred by this regulation. As a result, staff anticipates a representative individual may incur small additional costs (as discussed in the Initial Statement of

Reasons) because of a possible increase in manufacturing costs.

Further, ARB staff has estimated possible costs of compliance for affected businesses in the Initial Statement of Reasons. These estimates, and the bases for them, are also discussed in the Initial Statement of Reasons.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action would have some impact, although not significant, on small businesses that buy and sell large turf care equipment, portable generators, and industrial equipment. During the initial years of implementation, the increased cost of equipment may lead to a slight drop in demand that could result in lower profits for small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and in writing or by e-mail before the meeting. To be considered by the Board, written comments submissions not

physically submitted at the meeting must be received **no later than 12:00 noon, November 19, 2008**, and addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, e-mail, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

The Board requests, but does not require, that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601, 43013, 43018, 43101, 43102, and 43104. This action is proposed to implement, interpret and make specific sections 43013, 43017, 43018, 43101, 43102, 43104, 43105, 43150-43154, 43205.5, and 43210-43212.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be

made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CURRENT REGULATIONS FOR SMALL OFF-ROAD ENGINES

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the California regulations for small off-road engines (SORE).

DATE: November 20, 2008

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, CA

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., November 20, 2008, and may continue at 8:30 a.m., November 21, 2008. This item may not be considered until November 21, 2008. Please consult the agenda for the meeting, which will be available at least 10 days before November 20, 2008, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document and other related material can be made available in Braille, large print, audiocassette or computer disk. For assistance, please contact ARB's Reasonable Accommodations/Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services, or go to <http://www.arb.ca.gov/html/ada/ada.htm>.

If you are a person with limited English and would like to request interpreter services to be available at the Board meeting, please contact ARB's Bilingual Manager at 916-323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 2403, 2405, 2406, 2408 and 2409, within chapter

9, article 1, title 13, California Code of Regulations (CCR); proposed amendments to the incorporated "California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines," as adopted July 26, 2004.

Background: Health and Safety Code sections 43013 and 43018 direct ARB to achieve the maximum feasible and cost-effective emission reductions from all mobile source categories, including small off-road engines, through the setting of emission standards and other requirements.

In 1990, the Board approved exhaust emission control regulations for new small off-road engines. Small off-road engines are equal to or less than 19 kilowatts (kW) and include both handheld equipment (such as string trimmers and chain saws) and nonhandheld equipment (such as lawn mowers and generators, as well as industrial equipment).

In 1998, the Board revised the standards and required manufacturers to meet the emission standards for the life of the engine instead of just when the engines are new. In addition, the Board adopted an emissions credit program.

In 2003, ARB adopted evaporative emissions standards and more stringent catalyst-based exhaust standards. The tier 3 hydrocarbon plus oxides of nitrogen (HC+NO_x) emission standards for engines less than 50 cubic centimeters (cc) went into effect with the 2005 model year. The new catalyst-based standards were to be implemented with the 2007 model year for engines between 80 and 225 cc, and with the 2008 model year for engines 225 cc and above. Overall, these catalyst-based standards represented an additional 35 percent reduction in engine-out exhaust emissions from the previous HC+NO_x emission standards.

As noted above, one of the changes made in 1998 was the establishment of an emissions credit program. The program involved two types of credits: certification credits and production credits. A manufacturer obtains certification emission credits when it certifies an engine to a family emission level (FEL) below the standards. The other method of obtaining credits is through the production emission credit program. Manufacturers can obtain emission credits for the amount the production line test results are below the FEL.

Currently, manufacturers have banked in excess of 10,000 tons of HC+NO_x emissions reduction credits as of the end of the 2007 model year. At the same time, the tier 3 emissions standards for engines greater than 80 cc are coming into effect in 2007 and 2008. Because of the large amount of emissions credits banked, however, the air quality benefits of the new tier 3 standards are not being realized. Manufacturers are building very few engine families that meet the tier 3 standards, relying instead on banked credits to meet the tier 3 require-

ments. In other words, these temporary banked emission reductions, reductions that will be returned to the ambient air as they are used, are postponing the beneficial effects of the permanent reductions that come from compliance with the tier 3 standards.

Description of the Proposed Regulatory Action:

Staff's proposal addresses issues that have developed since the Board's 2003 rulemaking and enhances alignment with other ARB and United States Environmental Protection Agency (U.S. EPA) regulations. The major changes would:

- eliminate the generation of production emission credits after model year 2009;
- modify the use of existing production emission credits; and
- limit the lifetime of future certification emission credits to five model years.

The elimination of production emission credits would bring the SORE regulations in alignment with other emissions credit programs.

The proposal also includes other minor changes as follows:

- an option to accept the use of a certification fuel with up to ten percent ethanol content;
- requirements for an English-speaking contact for warranty issues; and
- Executive Officer discretion to make technical modifications.

A more detailed description of staff's proposal is included in the Staff Report: Initial Statement of Reasons for Rulemaking to Consider Amendments to the Current Regulations for Small Off-Road Engines.

COMPARABLE FEDERAL REGULATIONS

Small off-road engines are currently subject to federal regulations contained in title 40 Code of Federal Regulations (CFR), part 90. On September 4, 2008, U.S. EPA approved its "Final Rule: Control of Emissions of Air Pollution from New Nonroad Spark-Ignition Engines, Equipment, and Vessels" for nonroad spark-ignition engines and equipment that would institute "phase 3" standards that generally harmonize with existing tier 3 California exhaust standards for SORE. These changes will be placed in 40 CFR part 1054.

Neither the existing federal regulation nor the final federal rule includes production emission credits. The U.S. EPA certification credit program will impose limitations on the use of certification credits to meet the phase 3 standards. Emission credits which are above the new standard and obtained before the standard change could be used for two years after the phase 3 emission standards are implemented. However, emission credits generated by engines under the phase 3 ex-

haust averaging, banking, and trading program are proposed to have an unlimited credit life.

The proposed regulations are expected to indirectly reduce emissions by insuring full implementation of the tier 3 emission standards, beyond what would be accomplished by the existing federal regulations. Thus, the need for the separate California program is justified by the benefit to human health, public welfare, and the environment. In addition, Health and Safety Code sections 43013 and 43018 authorize the differences from the federal program.

BENEFITS OF THE PROPOSAL

Staff's objectives in recommending the revisions to California's SORE regulations are to provide harmonization with other regulatory programs and the federal requirement. It is also Staff's objective to address the unlimited accumulation of emission credits. Small off-road engine manufacturers possess over 10,000 tons of banked HC+NO_x emission credits. If those credits were to be expended over the proposed credit lifetime of five years, it would represent an increase of over five tons per day of HC+NO_x emissions. The proposed changes would not modify the emission standards themselves.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Staff Report: Initial Statement of Reasons for Rulemaking, Public Hearing to Consider Amendments to the Current Regulations for Small Off-Road Engines."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and ~~strikeout~~ format to allow for comparison with the existing regulations, may be accessed on the ARB's web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on November 20, 2008.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Scott Rowland, at (626) 575-6676

or srowland@arb.ca.gov, or Ms. Yun Hui Park, at (626) 450-6263 or ypark@arb.ca.gov.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at www.arb.ca.gov/regact/2008/sore2008/sore2008.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to state or local agencies. The ARB may incur additional implementation or enforcement costs at some future time.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the

expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action would have some impact, although not significant, on small businesses that buy and sell off-road equipment using these engines.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the board or that has otherwise been identified and brought to the attention of the board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and in writing or by e-mail before the meeting. To be considered by the Board, written comments submissions not physically submitted at the meeting must be received **no later than 12:00 noon, November 19, 2008**, and addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California
95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601, 43013, 43018, 43101, 43102, 43104, and 43105. This action is proposed to implement, interpret and make specific sections 43013, 43017, 43018, 43101, 43102, 43104, 43105, 43150-43154, 43205.5, and 43210-43212.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

TITLE 14. CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

NOTICE OF PROPOSED RULEMAKING

TITLE 14. NATURAL RESOURCES

DIVISION 7. CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

CHAPTER 6. PERMITTING OF WASTE TIRE FACILITIES

ARTICLE 8.5. WASTE TIRE HAULER REGISTRATION

PROPOSED REGULATORY ACTION

The California Integrated Waste Management Board (CIWMB) proposes to amend Title 14, California Code of Regulations, Division 7, Chapter 6, by amending Articles 8.5, sections 18449 through 18466. The proposed regulations make changes in the existing regulations to implement new procedures with regards to common carriers and beneficial use of waste tires; changes were also made in an effort to clarify and cleanup existing regulations.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the CIWMB. **The written comment period for this rulemaking closes at 4:00 p.m. on November 17, 2008.** The CIWMB will only consider comments received at the CIWMB's headquarters by that time. Please submit your written comments to:

Cathy Blair, Tire Hauler Compliance Section
Compliance Evaluation & Enforcement Division
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, California 95812-4025
Fax: (916) 319-7452
e-mail: cblair@ciwmb.ca.gov

If an individual previously commented on these regulations during workshops, that person should be aware that those comments were considered and often incorporated into the regulations. However, if such individuals are not satisfied with the proposed regulations, as they exist in the current proposed regulations, they must resubmit their comments so that they will be considered anew and made a part of this rulemaking record.

PUBLIC HEARING

A public hearing to receive public comments has been scheduled for **December 8, 2008**. The hearing will be held at the

Joe Serna Jr., Cal EPA Building
1001 I Street, 2nd Floor
Sacramento, CA 95814

The hearing will begin at **10:00 a.m. on December 8, 2008**, and will conclude after all testimony is given. The CIWMB requests that persons making oral comments

also submit a written copy of their testimony at the hearing. The hearing room is wheel chair accessible. If you have any questions, please contact Cathy Blair at (916) 341-6803.

INFORMATIVE DIGEST

The California Integrated Waste Management Act (Act), Public Resources Code (PRC) §40000 et seq., gives the CIWMB authority to provide for the protection of public health, safety and the environment through waste prevention, waste diversion, and safe waste processing and disposal. PRC §40502 requires the CIWMB to adopt rules and regulations to implement the Act.

The proposed regulation revisions integrate the new waste tire hauler common carrier exemption, and provide exemption for beneficial use of tires while transporting materials, as well as providing clarity and clean-up to the existing regulations language.

Specifically, the subject regulations:

- a) Provide for common carrier exemption language
- b) Establish a process for common carrier exemption letter application
- c) Comprise five new items to the Penalty table
- d) Provide exemptions for beneficial use of tires while transporting materials
- e) Eliminate language as it refers to retreaders
- f) Ascertain the comprehensive trip log (CIWMB 203) (CTL) as the proper form for manifesting
- g) Establish waste tire hauler requirement of valid driver's license.
- h) Require that waste tire hauler vehicles maintain current Department of Motor Vehicle Registration

CIWMB staff conducted an informal public workshop in March 2008, to discuss and receive comments on the proposed "Discussion and Request for Rulemaking Direction on Formally Noticing Proposed Revision to the Regulations to Clarify Waste Tire Hauler and Storage Requirement." The workshop was conducted with minimal attendance (approximately eleven individuals in the audience and five small groups via conference call). No changes were proposed that required amendment to the proposed language.

CIWMB, therefore, has proposed changes in the existing regulations to implement new procedure. In addition, changes were made in an effort to clarify and clean-up existing regulations.

The proposed changes to the existing regulations are presented as follows:

- The development of the new Common Carrier Exemption language which includes a new Exemption Letter Application.

- The Penalty Table will include new language to accommodate certain waste tire hauler offenses, which were previously excluded.
- A new one year exemption will be provided for the beneficial use of waste tires during certain materials transportation to accommodate those businesses that do not haul tires to an end use facility but rather, use the waste tires as bumpers or cushions to stabilize or protect the goods or materials being transported.
- All waste tire haulers must maintain a valid driver's license and vehicle registration with the Department of Motor Vehicles.
- New language will emphasize the requirement to complete and submit the Unregistered Hauler and Comprehensive Trip Log Substitution form (CIWMB 204)
- Remove outdated Retreader Self Certification and Tire Trip Log form references from the regulation language.
- Amend Article 8.5 definitions and language making the regulations more functional, correcting errors, and deleting other unnecessary language.

POLICY STATEMENT OVERVIEW

The CIWMB regulates the hauling of used and waste tires in California. The Waste Tire Hauler Program currently registers more than 1,146 waste tire haulers annually, with more than 6,500 vehicles statewide, and requires that every used or waste tire be manifested from the generator to the end-use or disposal facility. Existing waste tire hauler regulations set forth procedures for the waste tire haulers registration process and current manifest requirements.

The proposed regulations changes will bring more clarity to the existing regulations; implement new application and exemption procedures; correct errors; add definitions and modify language to make regulations more functional; and delete unnecessary language.

PLAIN ENGLISH REQUIREMENTS

CIWMB staff prepared the proposed regulation changes pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2(a)(1). The proposed final regulations are considered non-technical and are written to be easily understood by those parties that will use them.

AUTHORITY AND REFERENCES

PRC §§ 40502, 42962, 42966, and 43020 provide authority for these regulations. The purpose of the proposed actions is to implement, interpret, and make specific numerous statutes and regulations related to the transportation of used and waste tires. The following is a list of references cited in these proposed regulation changes: PRC §§ 42950, 42951, 42952, 42953, 42954, 42955, 42956, 42958, 42960, 42961, 42961.5, and 42962.

FEDERAL LAW OR REGULATIONS MANDATE

Federal law or regulations do not contain comparable requirements.

MANDATE ON STATE AGENCIES, LOCAL AGENCIES, OR SCHOOL DISTRICTS

CIWMB staff has determined that the proposed regulations do not impose: 1) a mandate on local agencies or school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code §§17500 through 17630; 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the state.

FINDINGS ON NECESSITY OF REPORTS

CIWMB staff have found that the requirement for specific reports is necessary for the health, safety and welfare of the people of the state because it will help to ensure that the standards in the revised regulations are met by operators and are adequately monitored by enforcement agencies.

EFFECT ON HOUSING COSTS

CIWMB staff made an initial determination that the proposed regulations will not have a significant effect on housing costs.

EFFECT ON BUSINESSES

CIWMB staff made an initial determination that the proposed regulation changes would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

CIWMB staff made an initial determination that the proposed regulations will not have a significant state-wide adverse economic impact directly affecting small businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulations may apply to business and small businesses, but as stated above, will not have a significant adverse economic impact on business and small businesses. There should be no costs incurred with these regulatory changes as the waste tire generators, tire dealers, waste tire haulers, and waste tire end-use facilities will conduct business as usual. There are no changes other than clarification of the regulatory language amending the definitions and language to include: a simplified application process for common carriers, an amended enforcement penalty table, an exemption for beneficial use of waste tires; a requirement that all tire hauling drivers maintain a valid driver's license; and the requirement that vehicles be registered with the Department of Motor Vehicles.

EFFECT ON CREATION OR ELIMINATION OF JOBS, EXISTING OR NEW BUSINESS IN THE STATE OF CALIFORNIA

CIWMB staff has determined that the proposed regulatory action will not affect: 1) the creation or elimination of jobs within the state of California; 2) the creation of new businesses or the elimination of existing businesses within California; or 3) the expansion of businesses currently doing business with the state.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CIWMB staff has determined that the adoption of the proposed regulations will not have a cost impact on private persons or businesses, because the impacts of the proposed regulations already exist in current law and regulation. The waste tire generator, tire dealer, waste tire hauler, and waste tire end-use facility will conduct business as usual. The proposed regulations primarily clarify existing law and impose no new adverse impacts. Some modifications to the regulations will result in recognized cost savings to common carriers and those utilizing the special beneficial use of waste tires exemption for transporting loads. Common carriers will save time and money, as they will only need to request an exemption every five years, and tire generators will be allowed to complete CTL Manifest on their behalf. Also private persons or businesses that use tires for

beneficial use will realize a cost savings of approximately \$250 a year as they will not be required to become a registered hauler which involves the purchase of a bond.

CONSIDERATION OF ALTERNATIVES

The CIWMB must determine that no reasonable alternative considered by the CIWMB or that has otherwise been identified and brought to the attention of the CIWMB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The CIWMB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Cathy Blair, Compliance Evaluation & Enforcement Division
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, California 95812-4025
(916) 341-6803 phone, (916) 319-7452 facsimile
e-mail: cblair@ciwmb.ca.gov

Back-up contact person to whom inquiries concerning the proposed administrative action may be directed:

Keith E. Cambridge, Compliance Evaluation & Enforcement Division
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, California 95812-4025
(916) 341-6422 phone, (916) 319-7605 facsimile
e-mail: kcambri@ciwmb.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The CIWMB will have the entire rulemaking file, and all information that provides the basis for the proposed regulations, available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Cathy Blair at the address or phone number listed above. For more timely access to the proposed text of the regulations, and in the interest of waste prevention,

interested parties are encouraged to access the CIWMB's Internet homepage at www.ciwmb.ca.gov/Rulemaking/TireHauler/. Additionally, the Final Statement of Reasons will be available at the above listed Internet address or you may call the contact persons named above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The CIWMB may adopt the proposed regulations substantially as described in this notice. If the CIWMB makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text — with changes clearly indicated — available to the public for at least 15 days before the CIWMB adopts the regulations as revised. Requests for the modified text should be made to the contact person named. The CIWMB will mail any modified text to all persons who testify at the public hearing; all persons who submit written comments at the public hearing; all persons whose comments are received during the comment period; and all persons who request notification of the availability of such changes.

TITLE 16. BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may submit statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the board at its office not later than 5:00 p.m. on November 17, 2008.

The board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office not later than 5:00 p.m. on November 3, 2008.

The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who

have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions Code, and to implement, interpret, and make specific section 2570.15 of said Code, the board is considering changes to Division 39 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend section 4110.

Business and Professions Code section 2570.15 specifies that occupational therapists and occupational therapy assistants trained outside of the United States and its possessions shall be required to satisfy the examination requirements of Section 2570.7. The board shall require that these applicants have completed educational and supervised fieldwork requirements substantially equal to those contained in Section 2570.6, before taking the examination.

This proposal would define the term "substantially equal" for clarity purposes.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The board has made an initial determination that the proposed regulatory action would not have a significant adverse economic impact directly affecting small businesses. The amendment only relates to academic requirements of educational programs for persons applying for either occupational therapy or occupational therapy assistant licenses who have been trained outside the United States.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Any interested person may present written statements relevant to the above determinations to the board at the address mentioned below.

INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons may be obtained upon request from the California Board of Occupational Therapy at 2005 Evergreen Street, Suite 2050, Sacramento, CA 95815, or from the board website listed below or upon written request from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the board website at www.bot.ca.gov.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Jim Schenk
Address: 2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
Telephone No.: 916/263-0849
FAX No.: 916/263-2701
E-mail Address: cbot@dca.ca.gov

The backup contact person is:

Name: Heather Martin
Address: 2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
Telephone No.: 916/263-2294
FAX No.: 916/263-2701
E-mail Address: cbot@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.bot.ca.gov.

TITLE 16. BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the proposed action in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on November 17, 2008.

The board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board's office not later than 5:00 p.m. on November 3, 2008.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions Code, and to implement, interpret or make specific section 2570.10, the Board is proposing revising Di-

vision 39, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend section 4161

Existing law allows the Board to establish continuing competency requirements as a condition of renewal of a license or certificate. Current regulations specify what professional development activities will meet established competency requirements. The proposed regulation would:

- Amend Section 4161(a)(1) to redefine time requirements for earning a PDU, Professional Development Unit from fifty (50) minutes to one (1) hour, and would make PDUs consistent with the time requirements established by providers of continuing education courses
- Allow PDU credit for smaller increments of time spent supervising fieldwork of Level II students
- Expand types of professional development activities which would qualify for earning PDU credits.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not affect small businesses because the regulation does not regulate small businesses, does not require reports or any other compliance activities.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may request a hearing to present statements or arguments orally or in writing relevant to the above determinations, if requested no later than 15 days prior to the close of the written comment period.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below or upon written request from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Jim Schenk
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

Website Access: All materials regarding this proposal can be found on-line at www.bot.ca.gov > **Laws and Regulations > Proposed Regulations.**

TITLE 16. BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may submit statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the board at its office not later than 5:00 p.m. on November 17, 2008.

The board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office not later than 5:00 p.m. on November 3, 2008.

The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 134, 152.6, 462 and 2570.20 of the Business and Professions Code, and to implement, interpret, and make specific section 2570.15 of said Code, the board is considering changes to Division 39 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend section 4130.

Business and Professions Code section 2570.16 authorizes the board to set the initial license or certification and renewal fees in an amount that does not exceed a ceiling of one hundred fifty dollars (\$150) year.

16 CCR 4120(a)(1) provides that a license or certificate issued shall expire at 12 midnight on the last day of the holder's birth month during an odd year if the licensee was born in an odd year or during an even year if the licensee was born in an even year. The initial license fee shall be prorated based on the number of months of licensure which shall be calculated from the month of issuance and on the holder's birth month and birth year.

This proposal would amend 16 CCR 4130(a) to specify that the initial license or certificate fee shall be prorated based on the actual length of time for which the initial license is issued. This amendment will resolve inconsistencies with 4130(a), 4120(a) and 4120(a)(1). The duration of the initial license based on the holder's birth month and birth year, as currently stated in 4120(a)(1), will commence on the month of issuance and shall determine the proration of the initial license fee based on the biennial license fee of \$150.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The board has made an initial determination that the proposed regulatory action would not have a significant adverse economic impact directly affecting small businesses because the proposed regulation only pertains to the initial license or certificate fee of individual licensees.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Any interested person may present written statements relevant to the above determinations to the board at the address mentioned below.

INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons may be obtained upon request from the California Board of Occupational Therapy at 2005 Evergreen Street, Suite 2050, Sacramento, CA 95815, or from the board website at www.bot.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Jim Schenk
Address: 2005 Evergreen Street, Suite
2050
Sacramento, CA 95815
Telephone No.: (916) 263-0849
FAX No.: (916) 263-2701
E-mail Address: cbot@dca.ca.gov

The backup contact person is:

Name: Heather Martin
Address: 2005 Evergreen Street, Suite
2050
Sacramento, CA 95815
Telephone No.: (916) 263-2294
FAX No.: (916) 263-2701
E-mail Address: cbot@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.bot.ca.gov.

TITLE 16. BUREAU OF SECURITY AND INVESTIGATIVE SERVICES

NOTICE IS HEREBY GIVEN that the Bureau of Security and Investigative Services (hereinafter referred to as "BSIS") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Place: Westin Los Angeles Airport Hotel
5400 West Century Blvd.
Los Angeles, CA 90045

Date: November 18, 2008; 2:00 p.m. to 4:30 p.m.

Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by this office no later than 5:00 p.m. on November 18, 2008.

The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact per-

son and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 7574.5 and 7574.7 of the Business and Professions Code, and to implement, interpret or make specific Sections 7574.5 and 7574.7 of said Code, the Bureau of Security and Investigative Services is considering changes to Division 7 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Adopt Section 645.

Business and Professions Code section 7574.5 authorizes the director to amend, adopt, or repeal regulations for the administration and enforcement of the training requirements for the Proprietary Private Security Officer's Act. SB 666, Chapter 721, Statutes of 2007, allows the Bureau to develop training requirements for proprietary private security officers.

This proposal would specify the proprietary private security officer training requirements contained in section 7574.5 of the California Business and Professions Code. This course would delineate the required training skills and time frame of sixteen (16) hours needed by a proprietary private security officer by the development of a training syllabus. It would also require the proprietary private security officer to complete two (2) hours of continuing education annually.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: NONE

Nondiscretionary Costs/Savings to Local Agencies: NONE

Local Mandate: NONE

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: NONE

Business Impact: The Bureau has determined that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting California business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing busi-

nesses or the expansion of businesses in the State of California.

Cost Impact on Private Persons or Entities:

The Bureau has determined that the proposed regulatory action will have a cost impact that a representative private person would necessarily incur in reasonable compliance with the proposed action. However, the increased cost is necessary to insure public safety and security.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations may have an effect on small businesses.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome on affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau of Security and Investigative Services at 2420 Del Paso Road, Suite 270, Sacramento, California 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection, by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written re-

quest to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be addressed to:

Name: Noreene DeKoning, AGPA
Address: 2420 Del Paso Road, Suite 270,
Sacramento, CA 95834
Telephone No.: (916) 575-7054
Fax: (916) 575-7290
E-Mail: www.noreene_dekoning@dca.ca.gov

The backup contact person is:

Name: Clarisa Serrato-Chavez, AGPA
Address: 2420 Del Paso Road, Suite 270,
Sacramento, CA 95834
Telephone No.: (916) 575-7004
Fax: (916) 575-7290
E-Mail Address: www.bsis.ca.gov

Inquiries concerning the substance of the proposed regulation may be directed to Noreene DeKoning, (916) 575-7054

Web site Access: Materials regarding this proposal can be found on the Bureau's web site at www.bsis.ca.gov.

TITLE 16. PROFESSIONAL FIDUCIARIES BUREAU

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE IS HEREBY GIVEN that the Professional Fiduciaries Bureau, Department of Consumer Affairs (hereinafter "Department"), is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the **Reporting Requirements, Enforcement and Code of Ethics** proposed at a hearing to be held at the:

Westin Los Angeles Airport
5400 West Century Blvd.
Los Angeles, CA 90045
on
November 18, 2008
at 9:00 a.m. until 12:00 p.m.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Profes-

sional Fiduciaries Bureau (hereinafter "Bureau") at its office not later than 5:00 p.m. on November 18, 2008 or must be received by the Bureau at the hearing. The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 125, 125.9, 148, 481, 482 and 6517 of the Business and Professions Code, and Government Code Section 11425.50 to implement, interpret or make specific Sections 125.3, 125.6, 125.9, 141, 148, 480(a), 481, 482, 490, 496, 6534, 6536, 6560, 6561, 6580, 6583, and 6584 of the Business and Professions Code and Sections 11425.50(e) and 11519 of the Government Code, the California Professional Fiduciaries Bureau, Department of Consumer Affairs (Department) amends Section 4422 of Article 2 and Section 4440 of Article 3, and adopts subdivision (f) of Section 4470 and subdivision (g) of 4482 of Article 4, Section 4544 of Article 9, Sections 4600, 4602, 4604, 4606, 4608, and 4610 of Article 10, and Sections 4620, 4622 and 4624 of Article 11 of Division 41 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Senate Bill 1550 (Figueroa, Chapter 491, Stats. 2006) created the Professional Fiduciaries Bureau under the Department to license and regulate private fiduciaries under the Professional Fiduciaries Act (Act). The Act was subsequently amended in 2007 by Senate Bill 1047 (Committee on Business, Professionals, and Economic Development, Chapter 354, Stats. 2007) to extend the licensing deadline to January 1, 2009, but, it still prohibits a court from appointing a person on or after July 1, 2008 to carry out the duties of a professional fiduciary unless the person holds a valid license issued by the Bureau.

Licensing for professional fiduciaries is a new mandate. The proposed regulations are necessary to establish the Bureau's program for enforcement and reporting. Furthermore, the regulations address potential ethical issues with licensees providing services for clients and incurring expenses in the management of clients' estates to ensure choices are made that are appropriate and reasonable based upon the needs of the clients and

the interests of the estates and that the expenses are reasonable for the services provided. Finally, the proposal makes technical changes to existing language.

Enforcement regulations are necessary for the Bureau's enforcement of all applicable laws and regulations against licensees including the establishment of a system of administrative citations and fines and the adoption of criteria for substantial relationship and rehabilitation for disciplinary actions.

These proposed regulations are needed to define the specific requirements of reporting to the Bureau information as authorized by the Act to assist in the regulation and enforcement of licensees and to inform the courts and public as required by the Act. Enforcement, reporting, and code of ethics regulations are necessary for the protection of the public's health, safety and welfare.

This regulatory action amends Section 4422 of Article 2 and Section 4440 of Article 3, and adopts subdivision (f) of Section 4470 and subdivision (g) of 4482 of Article 4, Section 4544 of Article 9, Sections 4600, 4602, 4604, 4606, 4608, and 4610 of Article 10, and Sections 4620, 4622 and 4624 of Article 11 of Division 41 of Title 16 of the California Code of Regulations. Specifically, this regulatory action:

Article 2. Application and Licensure

Amends Section 4422.

This amendment makes a technical cleanup.

Article 3. Prelicensing and Continuing Education

Amends Section 4440.

This amendment changes the date for qualifying pre-licensing education credit for licensure as cleanup.

Article 4. Code of Ethics

Adopts subdivision (f) of Section 4470.

This section relates to the licensee's duties in providing client services.

Adopts subdivision (g) of Section 4482.

This section relates to licensee's duties in incurring expenses on behalf of the client.

Article 9. Reporting Requirements

Adopts Section 4544.

This section specifies the ongoing reporting duties for licensure.

Article 10. Citations

Adopts Section 4600.

This section establishes the Bureau's authority to issue citations and establishes a citation format.

Adopts Section 4602.

This section defines the maximum administrative fine amount that can be assessed on a citation issued by the Bureau.

Adopts Section 4604.

This section specifies factors to consider when determining the amount of an administrative fine.

Adopts Section 4606.

This section would establish the process for contesting a citation and holding an informal conference.

Adopts Section 4608.

This section authorizes the Bureau to take administrative action against a licensee when they fail to comply with a citation.

Adopts Section 4610.

This section establishes order of abatement procedures.

Article 11. Enforcement

Adopts Section 4620.

This section specifies substantially related criteria for license suspension or revocation.

Adopts Section 4622.

This section specifies rehabilitation criteria for license suspension or revocation.

Adopts Section 4624.

This section specifies disciplinary guidelines for enforcement actions.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact:

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Bureau has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The cost impacts of the regulation include only those expenses associated with complying with record reporting requirements and administrative actions initiated by the Bureau for failing to be in compliance with the Professional Fiduciaries Act and other applicable laws, rules or regulations.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

In addition to reporting requirements, the Bureau has determined that the proposed regulations would only affect small fiduciary businesses that are subject to licensing under the Act that become subjects of enforcement actions.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Professional Fiduciaries Bureau at P.O. Box 989007, West Sacramento, California 95798-0007.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Mellonie Yang
Address: P.O. Box 989007
West Sacramento,
CA 95798-9007
Telephone No.: (916) 574-7340
Fax No.: (916) 574-8645
E-Mail Address: fiduciary@dca.ca.gov

The backup contact person is:

Name: Linda Shaw
Address: P.O. Box 989007
West Sacramento,
CA 95798-9007
Telephone No.: (916) 574-7340
Fax No.: (916) 574-8645
E-Mail Address: fiduciary@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.fiduciary.ca.gov.

TITLE 20. CALIFORNIA ENERGY COMMISSION

NOTICE OF PROPOSED ADOPTION

**PROPOSED AMENDMENTS TO
CALIFORNIA HOME ENERGY RATING
SYSTEM PROGRAM REGULATIONS
California Code of Regulations, Title 20,
Chapter 4, Article 8
Sections 1670 to 1675**

**CALIFORNIA ENERGY COMMISSION
DOCKET NUMBER 08-HERS-2
OCTOBER 3, 2008**

INTRODUCTION

Public Resources Code (PRC) Section 25942 directs the California Energy Commission to adopt a statewide

Home Energy Rating System (HERS) program for residential dwellings. The overall goal of this program is to provide reliable information to differentiate the energy efficiency among California homes, and guide investment in cost effective home energy efficiency measures. Information may also be provided to field verify the physical characteristics and measures installed in new homes to help demonstrate compliance with the California Residential Building Energy Efficiency Standards.

In 1999 the Energy Commission adopted the Phase I HERS Program regulations, establishing the program for the purposes of certifying home energy raters to provide field verification and diagnostic testing for demonstrating compliance with the Building Energy Efficiency Standards.

The Energy Commission announces the Phase II rulemaking of the HERS program to put in place the remaining statutory elements of PRC section 25942 necessary to extend the program to whole-house energy ratings for existing and newly constructed homes. Specifically, Phase II extends Phase I of the program to include methodologies for calculating a California HERS Index and analyzing utility bills and cost-effectiveness of energy efficiency measures. Phase II further addresses whole-house energy ratings and certification of individuals who would be involved in the California HERS Program, including raters, energy auditors, energy inspectors, energy analysts, and building performance contractors.

The Energy Commission has prepared this Notice of Proposed Action (NOPA) and an Initial Statement of Reasons regarding the need for the proposed amendments. This NOPA also announces the availability of the Express Terms (45-Day Language) of the proposed amendments to the existing HERS Program regulations, including the HERS Technical Manual that is incorporated by reference. These documents can be obtained from the contact persons designated below or from the Energy Commission website at [<http://www.energy.ca.gov/HERS/index.html>].

PUBLIC HEARING

The Energy Commission's Efficiency Committee (Committee) will hold a public hearing on the following date to receive public comments on the Express Terms:

WEDNESDAY, OCTOBER 15, 2008

10 a.m.

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

First Floor, Hearing Room A

Sacramento, California

(Wheelchair Accessible)

Audio for the October 15, 2008 Committee meeting will be broadcast over the Internet. For details, please go to:

[www.energy.ca.gov/webcast]

At this hearing, any person may present comments relevant to the proposed action. Interested persons may also submit written comments by **October 14, 2008**, to be considered at the Committee hearing. However, the Energy Commission appreciates and encourages the submittal of written comments at the earliest possible date.

PROPOSED ADOPTION DATE

The Energy Commission will hold a public hearing for consideration and possible adoption of the 45-Day Language Express Terms on the following date unless the Commission decides to modify the Express Terms through the issuance of 15-Day Language.

WEDNESDAY, NOVEMBER 19, 2008

10 a.m.

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

First Floor, Hearing Room A

Sacramento, California

(Wheelchair accessible)

Audio for the November 19, 2008 Adoption Hearing will be broadcast over the Internet at [www.energy.ca.gov/webcast].

At the adoption hearing, any person may present written or oral comments on the proposed amendments. Interested parties may also submit written comments by **November 17, 2008**, for consideration at the adoption hearing. Again, the Energy Commission appreciates and encourages the submittal of written comments at the earliest possible date.

If you have a disability and require assistance to participate in these hearings, please contact Lou Quiroz at (916) 654-5146 at least five days in advance.

PUBLIC COMMENT PERIOD/ WRITTEN COMMENTS

The public comment period for this NOPA will be from **October 3, 2008** through **November 19, 2008**. Please submit written comments on the proposed amendments in accordance with the dates specified above. Written comments are preferred to be emailed to [docket@energy.state.ca.us] and [hlam@energy.state.ca.us]. However, public comments may also be mailed or delivered to the following address:

California Energy Commission
Docket No. 08-HERS-2
Docket Unit
1516 Ninth Street, MS-4
Sacramento, California 95814-5504

All written comments must specify **Docket No. 08-HERS-2** on the document. When comments are e-mailed on behalf of an organization, the comments should be a scanned copy of the original on the organization's letterhead and include a signature of an authorized representative.

Written comments will also be accepted at both the Committee and the Adoption hearings provided that the comments are received by 10:00 a.m. on **November 19, 2008**.

AUTHORITY AND REFERENCE

The Energy Commission proposes to adopt the amendments under the authority of PRC sections 25213 and 25942. The proposed amendments implement, interpret, and make specific provisions of PRC section 25942.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

PRC section 25942 requires the Energy Commission to adopt a statewide home energy rating program for residential buildings. The program is required to establish the following:

- Consistent, accurate and uniform ratings based on a single statewide scale;
- Reasonable estimates of potential utility bill savings and reliable recommendations on cost-effective measures to improve energy efficiency;
- Training and certification procedures for home raters and quality assurance procedures to promote accurate ratings and protect consumers;
- In coordination with home energy rating system organizations, procedures to establish a centralized database including a uniform reporting system for information on residential dwellings;
- Labeling procedures that meet the needs of home buyers, homeowners, the real estate industry and mortgage lenders.

In 1999, the Energy Commission adopted the Phase I California HERS Program regulations under this statutory authority to utilize HERS raters to provide field verification and diagnostic testing services for showing compliance with the California Building Energy Efficiency Standards. Under the Phase I regulations, the ba-

sic infrastructure for training and certification of raters, quality assurance and uniform reporting and database management was established. The Commission is now conducting the Phase II rulemaking to extend the existing scope of the Phase I HERS Program to include whole-house energy ratings for existing and newly constructed homes and make some limited refinements of the Phase I rules for field verification ratings. This regulatory action is necessary to put in place the remaining statutory elements to achieve full compliance with PRC section 25942.

Under the Phase I HERS Program regulations, the Energy Commission has approved three HERS providers to train and certify over 1,000 HERS raters statewide, conduct quality assurance programs to monitor those HERS raters, and maintain databases of rating results. The Phase I HERS raters are paid by builders and contractors to conduct independent third-party field verification and diagnostic testing to ensure compliance with the Building Energy Efficiency Standards for newly constructed buildings and additions and alterations of existing buildings. They perform similar duties for demonstrating that homes and installations qualify for incentives for energy efficiency beyond that required by the Standards, which are offered by utility Public Goods Charge funded new construction programs, the Energy Star Homes Program, the New Solar Homes Partnership, and federal energy efficiency tax credits. Builders, contractors, and the administrators of these public incentives programs rely on the HERS Program to ensure that energy efficiency measures are reliably installed.

The proposed amendments extend the HERS Program to deliver whole-house energy ratings that provide California homeowners and home buyers with information about the relative energy efficiency of the homes they live in or homes that they are considering for purchase, and evaluation of the cost effectiveness of options to achieve greater energy efficiency in those homes. The HERS Phase II regulations set up a structure to ensure that these ratings and cost effectiveness analyses are technically accurate and done with quality and to avoid conflicts of interest to protect consumers. These regulations govern what is to be addressed by whole-house home energy raters, how they are to be established and the procedures for persons providing the services of a HERS provider or HERS rater. The regulations do not require that anyone provide these services; if a person chooses to pursue the business opportunity to provide HERS provider or HERS rater services, they must comply with the regulations. Existing HERS providers and HERS raters who provide field verification rating services must adjust their work to comply with limited modifications to existing rules.

Taking advantage of the whole-house energy ratings conducted under these regulations is voluntary on the part of homeowners, home purchasers, or home sellers. These regulations do not mandate the use of home energy ratings or the improvement of the energy efficiency of homes. The Phase II HERS Program regulations are expected to add considerable value to the real estate market for residential homes, providing valuable information for buyers, sellers, realtors, lenders, and appraisers. Also, these regulations are expected to add considerable value for homeowners to understand the advisability of investments in energy efficiency improvements for the homes they live in. The Energy Commission does expect that administrators of incentives programs, such as utility public goods charge programs and local governments, will provide incentives for performance of home energy ratings that meet the requirements of these regulations and for installing of energy efficiency improvements that are recommended as a result of these regulations. The Commission expects that this reliance on the whole-house home energy ratings meeting the requirements of these regulations will provide substantial business opportunities for persons who become certified to perform HERS provider and HERS rater services and for suppliers of energy efficiency improvements.

The *Home Energy Rating System Technical Manual (HTM)*, California Energy Commission Publication No. CEC 400-2008-012, September 2008, is a new document that provides details for implementing the proposed regulations. It will be incorporated by reference into the HERS Program regulations. The *HTM* is designed for the specific target audience of HERS providers and raters who are familiar with the technical terminology used in the manual.

There is no existing federal law governing a national HERS program. The proposed amendments do not conflict with nor are mandated by federal law.

DOCUMENT INCORPORATED BY REFERENCE

California Energy Commission
Home Energy Rating System Technical Manual
 CEC 400-2008-012, September 2008

OTHER STATUTORY REQUIREMENTS

Public Resources Code section 25213 provides the Commission with the authority to adopt rules and regulations necessary to carry out its assigned duties and responsibilities. There are no other statutory requirements that apply to the Phase II proposed amendments.

ECONOMIC AND FISCAL IMPACTS

The Energy Commission has made the following initial determinations.

LOCAL MANDATE

The proposed amendments will not impose a mandate on state or local agencies or districts.

FISCAL IMPACT

Costs Requiring Reimbursement. The proposed amendments will not impose on local agencies or school districts any costs for which Government Code sections 17500 to 17630 require reimbursement.

Other Non-Discretionary Costs or Savings for Local Agencies. The proposed amendments will not result in costs or savings for local agencies.

Costs or Savings for State Agencies. The proposed amendments will not result in any costs or savings for state agencies.

Cost or Savings in Federal Funding to the State. The proposed amendments will not result in any costs or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

The proposed amendments for Phase II will have no direct impact on housing costs because homeowners and home purchasers are not required to obtain whole-house home energy ratings, but volunteer to do so. A homeowner who wishes to have his/her home rated or audited and to invest in energy efficiency improvements will have to pay for the costs of the work and services. The costs for obtaining a rating will be limited, typically in the range of \$100 to \$300. Homeowners also will have the option to increase the energy efficiency of their existing homes or homes that they are considering for purchase by implementing the cost effective improvements recommended by the whole-house home energy rating. However, the homeowner will be able to see a return on their investment through reduced energy bills and will obtain other benefits, such as improved comfort and air quality in the home. Similarly, a prospective home buyer who purchases a rated home that has had energy efficiency improvements made to it would gain the same utility cost savings and other benefits. By being able to obtain this information at the time-of-sale, the cost of investment in energy efficiency improvements can be included in new mortgage financing, creating an instant positive cash flow where a small incremental increase in the mortgage payment to cover the cost of the improvements will be more than offset by a reduction in monthly energy bills.

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY AFFECTING
BUSINESS, INCLUDING THE ABILITY OF
CALIFORNIA BUSINESSES TO COMPETE
WITH BUSINESSES IN OTHER STATES**

The proposed amendments for Phase II will impose additional requirements on the three currently certified HERS Providers, should the providers choose to expand their responsibilities and implement the requirements to oversee whole-house home energy ratings. The HERS Providers will need to invest in the development of new course materials and rating software, the recruitment and training of staff, and other resources necessary to comply with the new provisions of the regulations. However, these costs will be offset by the training fees that the HERS Providers charge to participating HERS Rater applicants. Jobs for home energy raters and other service providers are expected to be created as a result of the proposed regulations. Also, additional business opportunities are expected to become available for providers, raters, and energy efficiency service providers who currently do not perform these services. New businesses providing such services may be created or existing businesses expanded. Therefore, the Energy Commission has made an initial determination that there will be no significant statewide adverse economic impact directly affecting businesses, including small businesses, as a result of the proposed amendments, including the ability of California businesses to compete with businesses in other states.

**IMPACTS ON THE CREATION OR
ELIMINATION OF JOBS WITHIN THE STATE,
THE CREATION OF NEW BUSINESSES OR THE
ELIMINATION OF EXISTING BUSINESSES,
OR THE EXPANSION OF BUSINESSES
IN CALIFORNIA**

The proposed amendments for Phase II will have no adverse impact on the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California. Any effect on jobs will be positive, as the regulations will enable greater employment opportunities for providers, raters, auditors, and other energy efficiency service providers due to the increased demand for services by homeowners and home buyers.

**COST IMPACTS ON REPRESENTATIVE
PERSON OR BUSINESS**

The Energy Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORTS

The proposed amendments will impose minor modifications to reporting requirements for existing HERS Providers and Raters engaged in field verification and diagnostic testing. Only HERS Providers, Raters, businesses, and individuals who choose to be certified to provide services within the proposed whole-house energy rating system will need to comply with new reporting requirements in accordance with the proposed amendments. The Energy Commission finds that the reporting requirements are necessary for the health, safety, or welfare of the people of the state.

SMALL BUSINESS

The proposed regulations may impact small business. Small businesses that wish to be certified in the existing home rating system subject to the proposed regulations must pay for training, reporting, and/or oversight costs. However, the acquired skills and certification will result in income-generating opportunities for the small businesses.

ALTERNATIVES

Before it adopts the proposed amendments, the Energy Commission must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective as and less burdensome to affected private persons than the proposed amendments. To date, the Energy Commission has found no alternatives to the proposed action that would be more effective, or as effective and less burdensome.

DESIGNATED CONTACT PERSONS

Please contact the following person, preferably by e-mail, for general information about the proceeding or to obtain any document relevant to the proceeding, including the Express Terms, the Initial Statement of Reasons, the Form 399, and any other document in the rulemaking file:

Helen Lam
California Energy Commission
1516 Ninth Street, MS-25
Sacramento, California 95814-5512
Telephone: (916) 651-3007
E-mail: [hlam@energy.state.ca.us]

Please contact the following person, preferably by e-mail, for substantive questions:

Rashid Mir
California Energy Commission
1516 Ninth Street, MS-25
Sacramento, California 95814-5512
Telephone: (916) 654-4109
E-mail: [rmir@energy.state.ca.us]

The backup contact person for substantive questions is:

Bruce Maeda
California Energy Commission
1516 Ninth Street, MS-25
Sacramento, California 95814-5512
Telephone: (916) 654-4077
E-mail: [bmaeda@energy.state.ca.us]

PUBLIC ADVISER

The Energy Commission's Public Adviser provides public assistance in participating in Energy Commission activities. If you wish to obtain information on how to participate in this proceeding, please contact the Public Adviser's Office by phone at (916) 654-4489 or toll free at (800) 822-6228, by FAX at (916) 654-4493, or by email at [pao@energy.state.ca.us].

NEWS MEDIA INQUIRIES

News media inquiries should be directed to the Media and Communications Office at (916) 654-4989, or by e-mail at [mediaoffice@energy.state.ca.us].

AVAILABILITY OF THE TEXT OF THE PROPOSED AMENDMENTS (EXPRESS TERMS), THE INITIAL STATEMENT OF REASONS, AND THE INFORMATION UPON WHICH THE PROPOSAL IS BASED (RULEMAKING FILE)

Documents in this rulemaking proceeding may be obtained at the Energy Commission's HERS website at [<http://www.energy.ca.gov/HERS/index.html>]. The website will have all of the documents prepared by the Energy Commission, including the Express Terms of

the proposed amendments (written in plain English and set forth in a format that indicates both the existing text and the proposed text), including the HERS Technical Manual that is incorporated into the regulations by reference, the Initial Statement of Reasons, all documents relied upon by the Commission, and most of the other documents in the rulemaking file. The Express Terms and the Initial Statement of Reasons are also available at no cost from Helen Lam or the Docket Office referenced above.

AVAILABILITY OF MODIFIED AMENDMENTS (15-DAY LANGUAGE)

At the **November 19, 2008** Adoption Hearing, the Energy Commission may adopt the proposed amendments substantially as described in this NOPA. If the Energy Efficiency Committee decides to make modifications in response to public comments, this hearing will be continued to a subsequently noticed date and the full modified text with changes clearly indicated will be made available to the public at least 15 days before the subsequently noticed date when the Commission will consider adoption of the amendments. A notice of the availability of any such text will be placed on the Commission's website and will be mailed to all persons to whom this notice is being mailed, who submitted written or oral comments at any hearing, who submitted written comments during the public comment period, or who requested to receive such modifications. In addition, copies may be requested from the contact person named above and from the Docket Office. The Commission will accept written comments on any such modified text for at least 15 days after the text is made available to the public. Adoption of the 15-Day Language will be considered at a public hearing scheduled in the notice of availability.

FINAL STATEMENT OF REASONS

The Energy Commission will prepare a Final Statement of Reasons on the amendments to respond to all relevant comments made during the proceeding. The Final Statement of Reasons will be available from Helen Lam or the Docket Office noted above.

GENERAL PUBLIC INTEREST

TITLE 2. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a

Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P.O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P.O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians & Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P.O. Box 925
Middletown, CA 95461

DEPARTMENT OF HEALTH CARE SERVICES

Editor's Note: The Department of Health Care Services published a General Public Interest notice in the September 26, 2008 California Regulatory Notice Register, 2008, 39-Z, p. 1723 on this subject. That published notice contained some errors, and the Department is publishing the following notice as a correction:

FINAL NOTICE OF GENERAL PUBLIC INTEREST

THE DEPARTMENT OF HEALTH CARE SERVICES WILL IMPLEMENT A PAYMENT REDUCTION FOR MEDI-CAL FEE-FOR-SERVICE INPATIENT HOSPITAL SERVICES PROVIDED BY NON-CONTRACT HOSPITALS

(First noticed September 5, 2008, Register 2008, number 36Z)

This notice is to provide information of public interest with respect to proposed changes in payments for some hospitals that provide inpatient services to Medi-Cal beneficiaries. Subject to the passage of pending legislation which will amend section 14166.245 of the Welfare and Institutions Code (W&I Code), the payment limits outlined below will be imposed.

Beginning on October 1, 2008, for hospitals that receive Medi-Cal reimbursement from the Department of Health Care Services (Department), and are not under contract with the Department pursuant to Article 2.6 (commencing with section 14081) of Chapter 7 of Part 3 of Division 9 of the W&I Code, the amounts paid as interim payments for hospital inpatient services rendered on or after October 1, 2008, must not exceed the lesser of the following:

- The amounts that would have been paid as interim payments for hospital inpatient services if section 14166.245 of the W&I Code were not in effect, reduced by 10 percent.

- For tertiary hospitals, the applicable regional average per diem contract rates established by the California Medical Assistance Commission (CMAC) for tertiary hospitals, reduced by five percent, and for non-tertiary hospitals, the applicable regional average per diem CMAC contract rates for non-tertiary hospitals, reduced by five percent.

The average regional per diem contract rates will be derived from the unweighted average contract per diem rates that are publicly available on June 1 of each year, trended forward based on the trends in the CMAC Annual Report to the Legislature. For tertiary hospitals and non-tertiary hospitals, the regional average per diem contract rates will be based on the geographic regions in the CMAC Annual Report to the Legislature. The applicable regional average per diem contract rates for tertiary hospitals and for non-tertiary hospitals will be published by the Department on or before October 1, 2008, and the rates will be updated annually for each state fiscal year and will become effective each July 1, thereafter.

For purposes of calculating the average regional per diem contract rates, both the federal and non-federal share of the cost-based rates for designated public hospitals will be included in the determination of the average contract rates by multiplying the hospital's interim rate, established pursuant to Section 14166.4 of the W&I Code and that is in effect on June 1 of each year, by two.

When calculating a hospital's cost report settlement for that portion of a hospital's fiscal period that includes dates of service on and after October 1, 2008, for those dates of service on and after October 1, 2008, payments to the hospital will be limited to the lesser of ninety percent of the hospital's audited allowable cost per day, or the applicable regional average per diem CMAC contract rate, reduced by five percent, multiplied by the number of Medi-Cal covered inpatient days in the hospital's fiscal year, or portion thereof.

A tertiary hospital is a children's hospital as specified in section 10727 of the W&I Code, or a hospital that has been designated a Level I or Level II trauma center by the Emergency Medical Services Authority established pursuant to section 1797.1 of the Health and Safety Code (H&SC).

These changes will not apply to small and rural hospitals as specified in section 124840 of the H&SC. These changes will also not apply to hospitals in open health facility planning areas (HFPAs) on October 1, 2008, unless the open HFPA at any time on or after July 1, 2005, was a closed HFPA as determined by CMAC, or unless the open HFPA has three or more hospitals with licensed general acute care beds.

Except as otherwise provided in Section 14091.3 of the W&I Code (relating to payments to hospitals by managed care plans), hospitals that participate in the Selective Provider Contracting Program pursuant to Article 2.6 (commencing with section 14081 of the W&I Code) and designated public hospitals under section 14166.1 of the W&I Code, except Los Angeles County Martin Luther King/Charles R. Drew Medical Center and Tuolumne General Hospital, will be exempt from these changes.

The terms "open HFPA" and "closed HFPA" will have the same meaning and be applied in the same manner as used by CMAC in the implementation of the hospital contracting program authorized in Article 2.6 (commencing with section 14081 of the W&I Code).

The reimbursement for inpatient services includes the amounts paid for all categories of inpatient services allowable by Medi-Cal, and includes the amounts paid for routine services, together with all related ancillary services.

As the California Legislature takes further action on the proposed amendments to California law which this notice describes, the information provided herein is subject to change.

OAL REGULATORY DETERMINATIONS

OFFICE OF ADMINISTRATIVE LAW

DETERMINATION OF ALLEGED UNDERGROUND REGULATIONS (Summary Disposition)

(Pursuant to Government Code
Section 11340.5 and
Title 1, section 270, of the
California Code of Regulations)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: September 17, 2008

To: Joel Holley

From: Chapter Two Compliance Unit

Subject: **2008 OAL DETERMINATION NO. 27(S)**
(CTU2008-0805-01)

(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation California State Prison—Solano Department Operations Manual Supplement section 53130.

On August 5, 2008, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether California State Prison—Solano Department Operations Manual (DOM) Supplement section 53130 constitutes an underground regulation. Section 53130 requires that inmates assigned in food service areas for over two years are to be unassigned or reassigned.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).² Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a “regulation” in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058(c) establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

¹ “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

² Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

This exemption is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a “local rule” adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

. . . .

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, DOM Supplement section 53130 was issued by California State Prison—Solano. It applies only to inmates at California State Prison—Solano. Inmates housed at other institutions are controlled by those other institutions’ procedures and policies for employment in the prison kitchens. Therefore, DOM Supplement section 53130 is a “local rule” and is exempt from compliance with the APA.³

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
SUSAN LAPSLEY
Director

/s/
Kathleen Eddy
Senior Counsel

³ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides in relevant part:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

. . . .

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. [Emphasis added.]

Copy: Matthew Cate
Tim Lockwood

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

Date: September 16, 2008

To: Louis Fresquez

From: Chapter Two Compliance Unit

Subject: **2008 OAL DETERMINATION NO. 26(S)**
(CTU2008-0908-01)
(Summary Disposition issued pursuant to
Gov. Code, sec. 11340.5; Cal. Code Regs., tit.
1, sec. 270(f))

Petition challenging as an underground
regulation Operational Procedure #101120.6
issued by California State Prison at Corcoran.

On July 10, 2008, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether Operational Procedure (OP) #101120.6 issued by California State Prison at Corcoran (CSP–Corcoran) constitutes an underground regulation. OP #101120.6 permits library staff to retain inmate documents for five days to complete photocopying.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).² Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a “regulation” in Government Code section 11342.600 is re-

¹ “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

² Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

quired to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058(c) establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

This exemption is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a “local rule” adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

. . . .

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, OP #101120.6 at issue here applies solely to the inmates of CSP–Corcoran. Inmates housed at other institutions are controlled by those other institutions’ requirements for photocopying. Therefore, OP #101120.6 is a “local rule” and is exempt from compliance with the APA.³

For the reasons discussed above, we find that the rule challenged by your petition is not an underground regulation.

³ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides in relevant part:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

. . . .

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. [Emphasis added.]

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
SUSAN LAPSLEY
Director

/s/
Kathleen Eddy
Senior Counsel
Copy: Matthew Cate
Tim Lockwood

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: September 16, 2008

To: Tyun Dodson

From: Chapter Two Compliance Unit

Subject: **2008 OAL DETERMINATION NO. 25 (S)**
(CTU2008-0818-01)
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation amendments to California Code of Regulations, title 15, sections 3269 and 3315 concerning inmate housing related to double celling

On August 18, 2008, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether California Code of Regulations, title 15, sections 3269 and 3315 concerning inmate housing related to double celling constitutes an underground regulation.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600, which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).¹ Nothing in this

analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

If a rule meets the definition of a regulation in Government Code section 11342.600, but was not adopted pursuant to the APA, it may be an "underground regulation" as defined in California Code of Regulations, title 1, section 250(a):

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, *but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA* and is not subject to an express statutory exemption from adoption pursuant to the APA. (Emphasis added)

Pursuant to Government Code section 11343.6, the filing of a rule with the Secretary of State raises the rebuttable presumption that it was duly adopted and that all the requirements of the APA have been met. You have challenged as underground regulations amendments to California Code of Regulations, title 15, sections 3269 and 3315, dealing with inmate housing. These amendments were adopted as emergency regulations required by the operational needs of the Department of Corrections and Rehabilitation pursuant to Penal Code section 5058.3.² The amendments were filed with the Secretary of State on March 18, 2008. The Cer-

² Penal Code section 5058.3 provides:

(a) Emergency adoption, amendment, or repeal of a regulation by the director shall be conducted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except with respect to the following:

(1) Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the initial effective period for an emergency adoption, amendment, or repeal of a regulation shall be 160 days.

(2) Notwithstanding subdivision (b) of Section 11346.1 of the Government Code, no showing of emergency is necessary in order to adopt, amend, or repeal an emergency regulation if the director instead certifies, in a written statement filed with the Office of Administrative Law, that operational needs of the department require adoption, amendment, or repeal of the regulation on an emergency basis. The written statement shall include a description of the underlying facts and an explanation of the operational need to use the emergency rulemaking procedure. This paragraph provides an alternative to filing a statement of emergency pursuant to subdivision (b) of Section 11346.1 of the Government Code. It does not preclude filing a statement of emergency. This paragraph only applies to the initial adoption and one readoption of an emergency regulation.

. . . .

¹ Government Code section 11342.600 defines "regulation" as: every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

tificate of Compliance for these regulations was filed with the Secretary of State on September 15, 2008.³

The amendments to sections 3269 and 3315 that you challenge as underground regulations have been duly adopted as regulations and filed with the Secretary of State pursuant to the APA. There is no evidence to rebut the statutory presumption established pursuant to Government Code section 11343.6. Therefore, OAL finds that the challenged rule is not an underground regulation.⁴

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
SUSAN LAPSLEY
Director

/s/
Kathleen Eddy
Senior Counsel

Copy: Matthew Cate
Tim Lockwood

³ Regulations adopted, amended or repealed as an emergency pursuant to Government Code section 11346.1, or pursuant to the alternative procedures for the Department of Corrections and Rehabilitation established in Penal Code section 5058.3, are effective for a limited period. To make the adoption, amendment or repeal of the emergency regulations permanent, the agency must comply with Government Code section 11346.1(c). Government Code section 11346.1(c) requires the rulemaking agency to submit a complete rulemaking file to OAL and to certify that it has completed the rulemaking requirements in the APA within the limited time the emergency regulations are in effect. This is known as a Certificate of Compliance.

⁴ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

...
(C) *The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.*

... [Emphasis added.]

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2008-0808-02
AIR RESOURCES BOARD
Indoor Air Cleaning Devices

AB 2276 (2006), subsequently codified as Health and Safety Code section 41986 et seq. directs ARB to develop and adopt regulations to protect the public health from ozone emitted by indoor air cleaning devices used in occupied spaces. The standards for ozone emissions for these types of devices that intentionally emit ozone are to match the federal standard of 0.050 parts per million. ARB has adopted regulations in Title 17 to accomplish this task that include: application of the regulations to manufacturers, suppliers or third party distributors (section 94800), definitions of terms (section 94801), the standard for indoor air cleaning devices that requires all such "intentional ozone emission" to emit ozone concentrations "not exceeding 0.050 ppm" (section 94802), exclusions for industrial use and in-duct air systems (section 94803), certification requirements incorporating ANSI/UL standards 507 and 867 and procedures for certification (section 94804), the testing method to be undertaken for certification (section 94805), labeling requirements (section 94806), required notices to be given to distributors, retailers and sellers by the manufacturers of indoor air cleaning devices (section 94807), recordkeeping requirements (section 94808), penalties for violation of the new regulations which include denial, revocation or suspension of certification, for failing to comply (section 94809) and severability of each section (section 94810).

Title 17
California Code of Regulations
ADOPT: 94800, 94801, 94802, 94803, 94804, 94805, 94806, 94807, 94808, 94809, 94810
Filed 09/18/2008
Effective 10/18/2008
Agency Contact: Trini Balcazar (916) 445-9564

File# 2008-0812-03

BOARD OF ACCOUNTANCY

Experience, License Re-issuance, Active Status, Continuing Education

This regulatory action deals with continuing education requirements and courses, reissuance of a certificate that has been cancelled by operation of Business and Professions Code section 5070.7, and requirements for converting a license from inactive status to active status.

Title 16

California Code of Regulations

AMEND: 11.5, 12, 12.5, 37, 87.1

Filed 09/19/2008

Effective 10/19/2008

Agency Contact:

Melody L. Friberg

(916) 561-1792

File# 2008-0829-03

BOARD OF EQUALIZATION

Vending Machine Operators

Section 1574 deals with permit requirements for and tax reporting and payment by vending machine operators. This section includes a table for vending machine operators to use to calculate taxable gross receipts from sales of cold food products through vending machines based on a formula contained in the section. The percentages shown in the table vary with the total state, local, and district tax rate applicable to the location of the vending machine. This change without regulatory affect updates the information in the table to reflect more current tax rates.

Title 18

California Code of Regulations

AMEND: 1574

Filed 09/24/2008

Agency Contact: Rick Bennion

(916) 445-2130

File# 2008-0829-04

BOARD OF EQUALIZATION

Coins and Bullion

This change without regulatory effect increases the tax exemption for gross receipts from the sale in bulk of monetized bullion, nonmonetized gold or silver bullion, and numismatic coins that are substantially equivalent to transactions in securities, pursuant to the formula set forth in Revenue and Taxation Code 6355.

Title 18

California Code of Regulations

AMEND: 1599

Filed 09/24/2008

Agency Contact: Rick Bennion

(916) 445-2130

File# 2008-0812-05

BOARD OF OCCUPATIONAL THERAPY

Advanced Practice

In this regulatory action, the Board of Occupational Therapy amends two regulations relating to "Advanced Practice" under Business and Professions Code section 2570.3. These "Advanced Practice" regulations involve post professional education and training requirements and application requirements.

Title 16

California Code of Regulations

AMEND: 4154, 4155

Filed 09/22/2008

Effective 10/22/2008

Agency Contact: Heather Martin (916) 263-2294

File# 2008-0826-01

DEPARTMENT OF DEVELOPMENTAL SERVICES

Section 100 Amendment to Title 17

This change without regulatory effect updates references to the Department of Health Services to reflect its division into the Department of Health Care Services and the Department of Public Health.

Title 17

California Code of Regulations

AMEND: 52082, 56103, 56104, 58670

Filed 09/24/2008

Agency Contact: Diana Nicolaou (916) 654-1760

File# 2008-0812-04

DEPARTMENT OF FOOD AND AGRICULTURE

Contagious Equine Metritis

This action repeals the regulation that has restricted the movement of horses infected with contagious equine metritis from other states and has specified permit requirements for movement of all horses from other states over two years of age, based upon the fact that the disease was eradicated in the United States in the late 1970s. It also updates the regulation with parallel restrictions on movement of horses from other countries to conform to current United States Department of Agriculture requirements for CEM testing.

Title 3

California Code of Regulations

AMEND: 810.1 REPEAL: 810

Filed 09/24/2008

Effective 10/24/2008

Agency Contact: Thami Rodgers (916) 698-3276

File# 2008-0820-05

DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Eradication Area

This is the certification of the emergency regulatory action designating the County of San Benito as an additional "eradication area" with respect to the light brown apple moth (*Epiphyas postvittana*).

Title 3

California Code of Regulations
AMEND: 3591.20(a)

Filed 09/23/2008

Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0807-03

DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Eradication Area

This is the certification of the emergency regulatory action designating the County of Sonoma as an additional "eradication area" with respect to the light brown apple moth (*Epiphyas postvittana*).

Title 3

California Code of Regulations
AMEND: 3591.20(a)

Filed 09/18/2008

Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0915-01

DEPARTMENT OF FOOD AND AGRICULTURE
Asian Citrus Psyllid Interior Quarantine

This emergency regulatory action will expand the current quarantine area of approximately 1181 square miles in San Diego County for the Asian Citrus Psyllid (ACP) *Diaphorina citri* by 630 square miles due to recent additional discoveries of this pest.

Title 3

California Code of Regulations
AMEND: 3435(b)

Filed 09/17/2008

Effective 09/17/2008

Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0919-01

DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This emergency rulemaking expands the existing quarantine area in San Mateo county and the existing quarantine in Napa, Solano and Sonoma counties. The second quarantine expansion results in the merging of two existing areas.

Title 3

California Code of Regulations
AMEND: 3434(b)

Filed 09/23/2008

Effective 09/23/2008

Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0829-06

DEPARTMENT OF JUSTICE
Surety Bond Form

This is a new surety bond form titled "Official Instrument Surety Bond" submitted by the Department of Justice pursuant to Government Code section 11110 to be used by individuals required to file such a bond with the Department of Fish and Game. This bond is required when there is a Streambed Alteration Agreement (SSA) pursuant to Fish and Game section 1600 et seq. or when there is a Take Authorization pursuant to the California Endangered Species Act, Fish and Game section 2050 et seq. The bond ensures compliance with the mitigation measures contained in the SSA or Take Authorization. This regulatory action is submitted to OAL only for the purposes of filing the regulation with the Secretary of State and printing the regulation in the California Code of Regulations.

Title 11

California Code of Regulations
ADOPT: 44.3

Filed 09/23/2008

Effective 09/23/2008

Agency Contact: Anne M. Burr (415) 703-1403

File# 2008-0812-01

DEPARTMENT OF PARKS AND RECREATION
Land and Water Conservation Fund

This regulatory action amends one section to incorporate by reference a procedural guide that updates the Land and Water Conservation Fund program description, application requirements, project administration, administrative procedures and post selection federal requirements. In addition, four sections are being repealed since they are replaced by the content of the procedural guide.

Title 14

California Code of Regulations
AMEND: 4900 REPEAL: 4901, 4902, 4903, 4904

Filed 09/22/2008

Effective 10/22/2008

Agency Contact: Debra Gonzales (916) 654-1618

File# 2008-0820-07

DEPARTMENT OF SOCIAL SERVICES

Restaurant Meals for the Homeless, Elderly, and Disabled

People who are homeless, elderly, or have disabilities and who are eligible for the Restaurant Meals (RM) program of the Food Stamp program previously carried

both a Golden State Advantage Electronic Benefit Transfer (EBT) card and a specially marked eligibility identification (ID) card which indicated their RM program eligibility. Now that the EBT card contains an RM program indicator code and can both verify eligibility and transfer benefits electronically, the separate eligibility ID card is obsolete. This rulemaking amends two sections of the Department of Social Services Manual of Policies and Procedures to delete reference to the eligibility ID card and to add reference to the RM indicator code.

Title MPP
California Code of Regulations
AMEND: DSS MPP 63-102, 63-504
Filed 09/18/2008
Effective 10/18/2008
Agency Contact: Sandra Ortega (916) 657-3174

File# 2008-0815-03
MANAGED RISK MEDICAL INSURANCE BOARD
Community Provider Plan Designation Timeline & Process Modification

This filing is a certificate of compliance with additional amendments for an emergency regulatory action that eliminated the requirement that MRMIB calculate the family value package and announce the designation of the community provider plan for each county by March 31st of each year.

Title 10
California Code of Regulations
AMEND: 2699.6500, 2699.6803, 2699.6805
Filed 09/22/2008
Effective 10/22/2008
Agency Contact: Randi Turner (916) 327-8243

File# 2008-0825-04
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
Control of Employee Dust Exposure from Concrete and Masonry Operations

This regulatory action adopts measures to control employee exposure from dust-generating operations conducted on concrete or masonry materials

Title 8
California Code of Regulations
ADOPT: 1530.1
Filed 09/22/2008
Effective 10/22/2008
Agency Contact: Marley Hart (916) 274-5721

File# 2008-0905-03
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
Emergency Medical Services

The Occupational Safety and Health Standards Board makes a nonsubstantive change pursuant to title 1, section 100 of the California Code of Regulations. Specifically, the change is to title 8, section 1512(d) to revise language to be gender neutral. This amendment is without regulatory effect and does not alter the requirements, rights, responsibilities, conditions, or prescriptions contained in the regulation.

Title 8
California Code of Regulations
AMEND: 1512
Filed 09/17/2008
Agency Contact: Marley Hart (916) 274-5721

File# 2008-0905-02
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
Airborne Contaminants

This change without regulatory effect removes footnote "u" in Table AC-1 of Section 5155 of Title 8, California Code of Regulations. Footnote "u" was an interim, two-year, ceiling limit for employee exposure to an airborne contaminant (Glutaraldehyde) which expired on July 6, 2008 and is, therefore, no longer in effect by operation of law.

Title 8
California Code of Regulations
AMEND: 5155
Filed 09/23/2008
Agency Contact: Marley Hart (916) 274-5721

File# 2008-0820-09
OFFICE OF THE STATE FIRE MARSHAL
Portable Fire Extinguisher Fees

This action establishes or increases various fees governing obtaining or renewing a Certificate of Registration for servicing and maintenance of portable fire extinguishers.

Title 19
California Code of Regulations
AMEND: 560
Filed 09/24/2008
Effective 10/01/2008
Agency Contact: Diane Arend (916) 324-9592

File# 2008-0820-10
OFFICE OF THE STATE FIRE MARSHAL
Automatic Fire Extinguishing Systems

This change without regulatory effect corrects an error in the March 21, 2006 version of Form AES 2 by substituting the June 17, 2008 version of that form.

Title 19
California Code of Regulations
AMEND: 906.3
Filed 09/24/2008
Agency Contact: Diane Arend (916) 324-9592

File# 2008-0805-04
STATE WATER RESOURCES CONTROL BOARD
Total Maximum Daily Load for Mercury in the Walker Creek Watershed

The California Regional Water Quality Control Board (San Francisco Bay Region) adopted Resolution R2-2007-0010 on January 23, 2007, amending the Water Quality Plan for San Francisco Bay Basin. It establishes (a) two new mercury water quality objectives for the watershed, (b) vacates the existing 4-day average mercury water quality objectives, and (c) establishes a mercury TMDL for Walker Creek and the Soula-jule Reservoir. The Executive Officer made clarifying changes pursuant to his authority under the resolution and submitted the rulemaking to the State Board for approval. The State Water Resources Control Board approved the adoption of the amendments on July 15, 2008 (Resolution No. 2008-0055). This rulemaking is a water quality plan amendment subject to the special and limited APA provisions of Government Code section 11353. The objectives will be reached via an implementation plan. In approximately 5 yrs, the Regional Board will consider the information gathered through additional studies and reexamine the implementation plan and any possible adjustments that may be necessary.

Title 23
California Code of Regulations
ADOPT: 3919.4
Filed 09/17/2008
Agency Contact:
Michael Buckman (916) 341-5479

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN APRIL 23, 2008 TO
SEPTEMBER 24, 2008**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1
04/24/08 AMEND: Appendix A

Title 2
09/04/08 ADOPT: 18530.45
09/04/08 AMEND: 18946.4
08/14/08 AMEND: 1859.2, 1859.121, 1859.122, 1859.127, 1859.129
08/08/08 ADOPT: 21905.5 AMEND: 21903, 21905
07/16/08 ADOPT: 18946.6
07/10/08 AMEND: 1859.76, 1859.83, 1859.104.3
07/10/08 AMEND: 1859.71
07/08/08 AMEND: 2271
06/26/08 AMEND: 554.2, 554.3
06/17/08 ADOPT: div. 8, ch. 112, sec. 59570
06/11/08 AMEND: 18360, 18361
06/11/08 ADOPT: 18421.7 AMEND: 18401
06/11/08 ADOPT: 18944.2 REPEAL: 18944.2
05/21/08 ADOPT: 59580
05/14/08 ADOPT: 18413
05/13/08 ADOPT: 59620
05/06/08 AMEND: 43000, 43001, 43002, 43003, 43004, 43005, 43006, 43007, 43008, 43009
04/30/08 AMEND: 1859.2, 1859.61, 1859.81, 1859.82, 1859.83, 1859.202, 1866, Form SAB 50-04 (Rev. 01/08)
04/29/08 ADOPT: 1859.190, 1859.191, 1859.192, 1859.193, 1859.193.1, 1859.194, 1859.195, 1859.196, 1859.197, 1859.198, 1859.199 AMEND: 1859.2, 1859.51, 1859.81, Form SAB 50-04 (Revised 01/08), Form SAB 50-05 (Revised 01/08), Form SAB 50-10 (Revised 01/08)
04/24/08 ADOPT: 1183.081, 1183.131, 1183.30, 1183.31, 1183.32 AMEND: 1181.1, 1181.2, 1181.3, 1183, 1183.01, 1183.04, 1183.08, 1183.11, 1183.13, 1183.14, 1183.3, 1188.3

Title 3
09/24/08 AMEND: 810.1 REPEAL: 810
09/23/08 AMEND: 3591.20(a)
09/23/08 AMEND: 3434(b)
09/18/08 AMEND: 3591.20(a)
09/17/08 AMEND: 3435(b)
09/11/08 AMEND: 3591.20(a)
09/10/08 AMEND: 3434
09/05/08 ADOPT: 3435
09/03/08 AMEND: 6452.2
09/02/08 AMEND: 3433(b)
09/02/08 AMEND: 3591.6(a)
08/26/08 AMEND: 3434(b)
08/25/08 AMEND: 3423(b)

08/18/08	AMEND: 6738, 6739	12220.16, 12220.18, 12220.20,
08/18/08	AMEND: 3434(b)	12220.20A, 12220.21, 12220.23, 12221,
08/13/08	AMEND: 3434(b)	12222, 12223, 12224, 12225, 12225.1,
08/12/08	AMEND: 3406(b)	12233, 12234, 12235, 12236, 12300,
08/11/08	AMEND: 3406(b)	12301, 12301.1, 12302, 12303, 12304,
08/01/08	AMEND: 3589(a)	12305, 12306, 12308, 12309, 12310,
08/01/08	ADOPT: 3591.22	12335, 12341, 12342, 12343, 12344,
07/28/08	AMEND: 3434(b)	12345, 12347, 12358, 12359, 12360,
07/25/08	AMEND: 902.9	12370, 12400, 12401, 12402, 12403,
07/24/08	ADOPT: 3591.21	12404, 12405, 12460, 12463, 12464,
07/22/08	AMEND: 3417(b)	12466, 12550, 12552, 12554, 12556,
07/16/08	AMEND: 3700	12558, 12560, 12562, 12564, 12566,
07/16/08	AMEND: 3406	12568, 12590
07/14/08	AMEND: 3963	08/04/08 AMEND: 1843.2
07/11/08	AMEND: 3434(b)	07/14/08 AMEND: 8070, 8072, 8073
07/09/08	AMEND: 3434(b)	07/10/08 AMEND: 1481, 1783, 1784
06/30/08	AMEND: 3589(a)	06/24/08 ADOPT: 12335, 12340, 12357 AMEND:
06/24/08	AMEND: 3963	12342, 12343, 12344, 12345, 12358,
06/24/08	AMEND: 3060.3	12359
06/23/08	AMEND: 3591.5(a)	05/23/08 ADOPT: 1843.3 AMEND: 1843.2
06/17/08	AMEND: 2751	05/01/08 AMEND: 1844
06/16/08	AMEND: 3434(b)	
06/11/08	AMEND: 3434(b)	Title 5
06/09/08	AMEND: 3700	09/10/08 AMEND: 41000
06/04/08	AMEND: 3434(b)	09/09/08 ADOPT: 19828.3, 19837.2 AMEND:
05/23/08	AMEND: 3434(b)	19816, 19816.1, 19828.2, 19837.1,
05/23/08	AMEND: 1438.7, 1438.17	19846
05/07/08	AMEND: 3434(b)	08/11/08 AMEND: 41000
05/05/08	AMEND: 3406(b)	08/04/08 ADOPT: 15575, 15576, 15577, 15578
05/02/08	AMEND: 3417(b)	07/16/08 AMEND: 18272
05/02/08	AMEND: 3434	06/24/08 AMEND: 80021
04/30/08	AMEND: 3591.20	06/19/08 AMEND: 4600(I)
04/23/08	AMEND: 6550	06/13/08 ADOPT: 55185, 57017 AMEND: 55180,
		57001.7, 58003.4, 58770, 58771, 58774
		06/10/08 AMEND: 30910, 30911, 30912, 30913,
		30914, 30916
		06/10/08 AMEND: 30920, 30921, 30922, 30923,
		30924, 30925, 30927
		06/09/08 ADOPT: 19828.3, 19837.2 AMEND:
		19816, 19816.1, 19828.2, 19837.1,
		19846
		05/28/08 ADOPT: 18085.5, 18086.1 AMEND:
		18086, 18087, 18088, 18091, 18101,
		18102, 18104
		05/21/08 ADOPT: 6105 AMEND: 6100, 6104
		05/13/08 AMEND: 15440, 15441, 15442, 15443,
		15444, 15445, 15446, 15447, 15448,
		15449, 15450, 15451, 15452, 15453,
		15454, 15455, 15456, 15457, 15458,
		15459, 15460, 15461, 15462, 15463,
		15464, 15467, 15468, 15469, 15471,
		15471.1, 15471.2, 15472, 15473, 15474,
		15475, 15476, 15477, 15478, 15479,
		15479.5, 15480, 15481, 15483, 15484,

Title 4

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